

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 77-6049

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
Docket No. 77-6049

B

County of Suffolk, County of Nassau,  
Town of Islip, Town of Hempstead,  
Town of North Hempstead, Town of  
Oyster Bay, Town of Huntington,  
and the Board of Trustees of the  
Town of Huntington and Concerned  
Citizens of Montauk, Inc.,

Appellees,

- against -

Secretary of the Interior, et al.,

Appellants,

National Ocean Industries Association,  
et al.,

Intervenor-Appellants.

The Natural Resources Defense Council, Inc.,

Appellees,

- against -

Thomas S. Kleppe, Secretary of the Interior,

Appellant,

National Ocean Industries Association, et al.,

Intervenor-Appellants.

---

On Appeal from the United States District  
Court for the Eastern District of New York



---

JOINT APPENDIX  
(Volume III - 1266 to 1937)

---

DAVID G. TRAGER  
United States Attorney,  
Eastern District of New York  
Attorney for Appellant  
Secretary of Interior

PAGINATION AS IN ORIGINAL COPY

# TABLE OF CONTENTS

|                                                                                                                                                                            | Page |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Docket Entries .....                                                                                                                                                       | 1    |
| Judgment of the Clerk of the United States<br>District Court for the Eastern District of<br>York dated and entered February 17, 1977 ...                                   | 17   |
| District Court Final Memorandum and Order<br>dated and entered in the United States Dis-<br>trict Court for the Eastern District of New<br>York on February 17, 1977 ..... | 18   |
| District Court Memorandum and Order dated and<br>entered in the United States District Court<br>for the Eastern District of New York on<br>August 13, 1976 .....           | 156  |
| Court of Appeals Order dated August 16, 1976 ..                                                                                                                            | 355  |
| Supreme Court Order dated August 19, 1976 .....                                                                                                                            | 357  |
| Court of Appeals Order dated October 14, 1976 .                                                                                                                            | 364  |

## TESTIMONY PRELIMINARY INJUNCTION HEARING

### Witnesses:

Jerome H. Milgram

|                |     |
|----------------|-----|
| Direct .....   | 366 |
| Cross .....    | 394 |
| Redirect ..... | 398 |
| Recross .....  | 402 |

Joseph W. Rachlin

|              |     |
|--------------|-----|
| Direct ..... | 406 |
|--------------|-----|



|                      | Page |
|----------------------|------|
| John M. Teal         |      |
| Direct .....         | 430  |
| James K. Mitchell    |      |
| Direct .....         | 457  |
| Cross .....          | 575  |
| Redirect .....       | 641  |
| John L. McHugh       |      |
| Direct .....         | 462  |
| Cross .....          | 676  |
| Stephen F. Moore     |      |
| Direct .....         | 727  |
| Cross .....          | 767  |
| Anita R. Freudenthal |      |
| Direct .....         | 781  |
| Cross .....          | 800  |
| Jan C. Prager        |      |
| Direct .....         | 808  |
| Cross .....          | 814  |
| Lloyd C. Atkinson    |      |
| Direct .....         | 820  |
| Cross .....          | 877  |

Elwood R. Jarmer

Direct ..... 882

Cross ..... 891

Thomas A. Thomas

Cross ..... 909

Daniel Newlon

Direct ..... 613

Cross ..... 953

George L. Donkin

Direct ..... 943

Cross ..... 945

Redirect ..... 970

Carl H. Oppenheimer

Direct ..... 978

Cross ..... 987

David Hoult

Cross ..... 1018

Alfred E. Smalley

Direct ..... 1022

Cross ..... 1027

|                         | Page |
|-------------------------|------|
| Eugene H. Luntley       |      |
| Direct .....            | 1033 |
| Cross .....             | 1034 |
| William P. Wenstrom     |      |
| Direct .....            | 1060 |
| Cross .....             | 1090 |
| Redirect .....          | 1106 |
| Louis Pugliaresi        |      |
| Direct .....            | 1111 |
| Robert F. Evans         |      |
| Direct .....            | 1124 |
| Cross .....             | 1139 |
| Closing Arguments ..... | 1148 |

PERMANENT INJUNCTION  
HEARING

Witnesses:

James K. Mitchell

|                |      |
|----------------|------|
| Direct .....   | 1176 |
| Cross .....    | 1191 |
| Redirect ..... | 1280 |

Elwood R. Jarmer

|                |      |
|----------------|------|
| Direct .....   | 1211 |
| Cross .....    | 1232 |
| Redirect ..... | 1262 |



## Fred Coldren

Direct ..... 1266

## Guy F. Muziani

Direct ..... 1286

Cross ..... 1306

## Thomas A. Thomas

Direct ..... 1316

## DeWitt Davies

Direct ..... 1328

Cross ..... 1396

Redirect ..... 1428

Recross ..... 1431

## Robert P. Corman

Direct ..... 1445

Cross ..... 1461

## Christopher T. Rand

Direct ..... 1472

Cross ..... 1551

Redirect ..... 1567

## H. Theodore Heintz

Direct ..... 1572

Cross ..... 1585

Redirect ..... 1614



|                  | Page  |
|------------------|-------|
| James Balsley    |       |
| Direct .....     | 1615  |
| Cross .....      | 1618  |
| Judith Gresham   |       |
| Direct .....     | 1641  |
| Cross .....      | 1651  |
| Redirect .....   | 1692  |
| David Hoult      |       |
| Direct .....     | 1702  |
| Cross .....      | 1708  |
| Franklin Brunjes |       |
| Direct .....     | 1720  |
| Cross .....      | 1761  |
| Redirect .....   | 1827  |
| Osborn Elliott   |       |
| Direct .....     | 1740  |
| Redirect .....   | 1760  |
| George L. Donkin |       |
| Direct .....     | 1833  |
| Cross .....      | 1862R |

Robert William Bybee

Direct ..... 1898

Cross ..... 1918

Court Colliery

Transcript of February 14, 1977 ..... 1933

## DEPOSITIONS

## Witnesses:

Frank Basile ..... 1938

Kent Frizzell ..... 1972

Karen Elliott House ..... 2071

Royston C. Hughes ..... 2078

Russell W. Peterson ..... 2120

## INDEX

Affidavit of George L. Turcott, sworn to the 10th  
day of April, 1975 ..... 2148Affidavit of Royston C. Hughes, sworn to the 13th  
day of October, 1976 ..... 2163Affidavit of Royston C. Hughes, sworn to the 16th  
day of January, 1976 ..... 2197Affidavit of Stanley B. Doremus, sworn to the 3rd  
day of August, 1976 ..... 2533Affidavit of Allan B. Powers, sworn to the 3rd day  
of August, 1976 ..... 2538Final Environmental Statement - Proposed increase  
in oil and gas leasing on the Outer Continental  
Shelf (1975) ..... 2557

BEST COPY AVAILABLE

|                                                                                                                                  | Page |
|----------------------------------------------------------------------------------------------------------------------------------|------|
| Technical Paper Number 1, December, 1975 .....                                                                                   | 2606 |
| Government exploration of the OCS - Office of OCS<br>Program Coordination, March 10, 1975 .....                                  | 2623 |
| Comments on paper - "Alternative Government<br>Exploration Programs" .....                                                       | 2649 |
| Position Paper dated June 20, 1975 on separation<br>of decisions to explore and to develop OCS<br>areas .....                    | 2655 |
| Letter dated November 3, 1975 regarding cancella-<br>tion clause in the Outer Continental Shelf<br>lease .....                   | 2670 |
| Letter dated October 31, 1975 on the authority<br>to terminate OCS oil and gas leases after the<br>exploratory phase .....       | 2672 |
| Memorandum dated May 16, 1975 relating to tract<br>selection guidelines for the proposed Mid-<br>Atlantic OCS sale no. 40 .....  | 2679 |
| Public Hearing Testimony of Steven Levy .....                                                                                    | 2689 |
| Public Hearing Testimony of Charles Worthington .....                                                                            | 2697 |
| Public Hearing Testimony of Joseph F. Bradway,<br>Jr. ....                                                                       | 2710 |
| Statement of the Gloucester County Development<br>Council by John Crandall .....                                                 | 2717 |
| BLM News Release dated August 25, 1976 .....                                                                                     | 2721 |
| Oil and Gas Lease for sale no. 40 .....                                                                                          | 2723 |
| List of Purchasers at OCS sale no. 40 .....                                                                                      | 2733 |
| Statement Before California Assembly Subcommittee<br>on Energy, October 18, 1976 .....                                           | 2763 |
| Alternatives for the Coast (1976) .....                                                                                          | 2776 |
| Defendants' Exhibit 5C, prepared by Franklin<br>Brunjes, showing various routes for trans-<br>portation of sale no. 40 oil ..... | 2812 |
| Public Hearing Testimony of Elwood Jarmer .....                                                                                  | 2813 |



|                                                                                                                                                                                     |      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Factbook - New England River Basins Commission,<br>RALI Project, selected pages .....                                                                                               | 2824 |
| Interim Land Use and Density Guidelines for<br>the Coastal Area of New Jersey .....                                                                                                 | 2938 |
| Department of Interior News Release dated<br>June 17, 1976, relating to the Mid-Atlantic<br>OCS decision .....                                                                      | 2952 |
| Federal Trade Commission letter dated March 8,<br>1976 to the Manager, New York OCS Office ...                                                                                      | 2953 |
| Affidavit of Robert Engler .....                                                                                                                                                    | 2957 |
| Affidavit of Fred Dubin .....                                                                                                                                                       | 2967 |
| Letter with enclosures to Mr. Like, dated<br>February 10, 1976, from J. R. Schubel .....                                                                                            | 2974 |
| Critique by Christopher T. Rand, dated<br>September, 1975 .....                                                                                                                     | 2979 |
| Letter of Irving Like to BLM New York OCS<br>Office forwarding material, dated<br>February 11, 1976 .....                                                                           | 3001 |
| Interim Report titled "Coastal Effects of<br>Offshore Energy Development", dated March 16,<br>1976, United States Congress, Office of<br>Technology Assessment, pp. 13-20, 30 ..... | 3002 |
| Letter to the Hon. William F. Hyland from<br>Robert P. Corman, dated December 16, 1976 ...                                                                                          | 3012 |
| Letter dated January 5, 1977 to Mr. Robert P.<br>Corman from Roger M. Schwartz .....                                                                                                | 3013 |
| Public Hearing Testimony of Freeholder Daryl F.<br>Todd, dated January 28, 1976 .....                                                                                               | 3014 |
| Response of Ocean County Board of Chosen Free-<br>holders to Draft EIS for sale no. 40, dated<br>January 29, 1976 .....                                                             | 3022 |
| Statement of Cape May County Board of Chosen<br>Freeholders on Draft EIS for sale no. 40 ...                                                                                        | 3028 |



|                                                                                                                                                                                          | Page |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Resolution of Cape May Planning Board<br>(February, 1976) .....                                                                                                                          | 3034 |
| Statement of the Cape May Planning Board, dated<br>January 27, 1976 on sale no. 40 .....                                                                                                 | 3035 |
| Exhibits prepared by George L. Donkin .....                                                                                                                                              | 3046 |
| Effects of Offshore Oil and Natural Gas Development<br>on the Coastal Zone, Ad Hoc Select Committee on<br>the Outer Continental Shelf, House of Representa-<br>tives, pp. 120, 146 ..... | 3078 |
| Draft Environmental Statement, OCS sale no. 42,<br>Proposed 1977 Outer Continental Shelf Oil<br>and Gas Lease Sale Offshore North-Atlantic<br>States, pp. 961-964, 988-989 .....         | 3081 |
| Programmatic Program Decision Option Document<br>Outer Continental Shelf Accelerated Leasing<br>Program (dated September, 1975) . . . . .                                                | 3088 |
| Program Decision Option Document Sale No. 40<br>Mid-Atlantic OCS . . . . .                                                                                                               | 3148 |
| Sale No. 40 Decision Memoranda . . . . .                                                                                                                                                 | 3216 |
| Call for Bids and Operating Orders (Federal<br>Register, Volume 41, Number 138 - July 16,<br>1976) . . . . .                                                                             | 3234 |
| Geological Survey; Mid-Atlantic Area Final<br>Orders; (1 through 5, 7 and 12) (Federal<br>Register, Volume 41, Number 134 - July 12,<br>1976) . . . . .                                  | 3239 |
| Oil and Gas Lease of Submerged Lands under<br>the Outer Continental Shelf Lands Act<br>(Form 3300-1 - May, 1976) . . . . .                                                               | 3251 |
| Appendix on Characteristics of Inorganic<br>Metal Pollutants Taken from the National<br>Academy of Science/National Academy of<br>Engineering (1972) . . . . .                           | 3290 |
| Written Testimony of George L. Donkin sub-<br>mitted on Preliminary Injunction Hearing                                                                                                   | 3314 |
| Article Appearing in the Wall Street Journal<br>on June 17, 1976 entitled "U.S. Sets First<br>Sale of Oil, Gas Leases in Atlantic Aug. 17"                                               | 3401 |

|                                                                                                                                                                              |      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Article appearing in the New York Times on<br>June 17, 1976 entitled "Sale of Offshore<br>Leases for Oil Drilling Slated" .....                                              | 3402 |
| Statement of President Richard Nixon appearing<br>in Volume 9 - Number 16 of PRESIDENTIAL<br>DOCUMENTS .....                                                                 | 3403 |
| Statement of Dr. Kenneth Lay dated September 12,<br>1973 .....                                                                                                               | 3414 |
| Statement of President Richard Nixon appearing<br>in Volume 10 - Number 4 of PRESIDENTIAL<br>DOCUMENTS .....                                                                 | 3429 |
| Memorandum dated September 18, 1974 from Jared<br>G. Carter to Director, Bureau of Lands<br>Management .....                                                                 | 3445 |
| Press Release from the Office of the White<br>House Press Secretary dated November 13, 1974                                                                                  | 3448 |
| Press Release from the Department of Interior<br>dated November 14, 1974 .....                                                                                               | 3450 |
| State of the Union address by President Gerald<br>R. Ford on January 15, 1975 - PRESIDENTIAL<br>DOCUMENTS, Volume II - Number 3 .....                                        | 3455 |
| Article appearing in the Bergen, New Jersey,<br>Sunday Record dated February 2, 1975 .....                                                                                   | 3464 |
| Press Release from the Office of the White<br>House Press Secretary dated July 9, 1975 ....                                                                                  | 3466 |
| Department of Interior News Release dated<br>March 3, 1976 .....                                                                                                             | 3468 |
| Memorandum of the United States Department of<br>Interior dated August 11, 1975 from Assistant<br>Director, Minerals Management to Team Leader,<br>Atlantic OCS office ..... | 3476 |
| Memorandum dated March 24, 1975 from Assistant<br>Secretary - Program Development and Budget<br>to Assistant Secretary - Energy and Minerals                                 | 3478 |
| A Decision Memoranda on Proposal for Accelerated<br>OCS Leasing .....                                                                                                        | 3480 |



|                                                                                                                                                                                                                                                                                             |      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Letter dated July 19, 1976 from Lawrence R. Hoese, Esq., Division of Energy and Resources to Cyril Hyman, Esq. ....                                                                                                                                                                         | 3501 |
| Portions of Interrogatories and Responses thereto filed in the United States District Court, Central District of California in the case of <u>People of the State of California ex rel. v. Morton</u> .....                                                                                 | 3506 |
| Letter dated June 28, 1976 from Rebecca W. Hanmer, Office of Federal Activities of EPA to Mr. Curtis J. Berklund .....                                                                                                                                                                      | 3512 |
| Department of Interior News Release dated May 5, 1976 .....                                                                                                                                                                                                                                 | 3514 |
| Draft Programmatic Statement (Volume 1 - Page 1).                                                                                                                                                                                                                                           | 3518 |
| Draft Programmatic Statement (Volume 2 - Pages 425-426) .....                                                                                                                                                                                                                               | 3519 |
| OCS Oil and Gas - An Environmental Assessment - A Report to the President by the Council on Environmental Quality - (Volume 1, pp. 58, 149-152).....                                                                                                                                        | 3521 |
| Curriculum Vitae of James Kenneth Mitchell .....                                                                                                                                                                                                                                            | 3526 |
| List of Papers Presented and Publications of James Kenneth Mitchell .....                                                                                                                                                                                                                   | 3532 |
| Coastal Effects of Offshore Energy Systems, United States Congress, Office of Technology Assessment, November, 1976, pp. 16-19, 37-38, 43-46, 63-66, 74, 126, 130-140, 143, 145, 147-150, 156-161, 164-165, 170-171, 186-187 .....                                                          | 3536 |
| Vol. II: Working Papers -- Coastal Effects of Offshore Energy Systems, United States Congress, Office of Technology Assessment, November, 1976, Working Paper #5, pp. 5-11, 17, 19, 20, 47-48, 55-65; Working Paper #7, pp. I, II-1 - II-3, III-1 - III-15, IV-1 - IV-10, V-1 - V-8 . . . . | 3583 |
| Affidavit of Cecil D. Andrus sworn to the 11th day of March, 1977 . . . . .                                                                                                                                                                                                                 | 3648 |
| Department of Interior News Release dated March 1, 1977 . . . . .                                                                                                                                                                                                                           | 3650 |



5

1

Coldren-direct

2

F R E D C O L D R E N , having been duly sworn by a

3

clerk of the court, testified as follows:

4

DIRECT EXAMINATION

5

BY MR. KAUFMAN:

6

Q Where do you live, Fr. Coldren?

7

A Cape May City.

8

Q Is that in Cape May County?

9

A That is one of the 16 towns.

10

Q Do you have any Government position at this

11

time?

12

A I am a member of the City Council.

13

Q How long have you held that job?

14

A Since October of 1976.

15

Q Is it a full-time job?

16

A It is not.

17

Q Prior to taking office did you hold, do you

18

hold any other positions in the community?

19

A Not elective positions but for 12 years I have

20

held, sir, civic, political positions in the county.

21

Q Can you give us some idea of what they are?

22

A Secretary of Cape May County, Beach and Erosion

23

Committee, several municipal committees and boards.

24

Q What is the governing body of your community?

25

A A mayor and council form of government with a

Coldren-direct

city manager.

Q How many members does the council have?

A Three.

Q Would you then consider yourself a member of the governing body of Cape May City?

A Yes.

Q How long have you lived in this city of Cape May?

A Twelve years.

Q What other activities do you engage in?

A I am employed by the county government as director of insurance, state and federal funds.

Q Do you have any civilian or nongovernmental interests?

A No.

Q How large is Cape May City in the wintertime?

A We have a permanent year-round population of 4,750 people.

Q How large is Cape May City in the summer?

A Our population expands to 47,000 people.

Q Can you approximate the number of jobs that there are in the summer?

A It is difficult but we resort — well, the resort related jobs we estimate about 2500 that exist on a



7 1 seasonal summertime basis.

2  
3 Q Will you explain or describe Cape May City's  
4 facilities physically?

5 A It is a small municipality of some 30 square  
6 miles bounded by the Atlantic Ocean on one side and a main-  
7 land area on the other. It is part of an island known as  
8 Cape Island shown at the very bottom of that map there.

9 Q Is this little populated area on the bottom  
10 here, is that Cape May City?

11 A No, approximately half of that island, the  
12 right-hand half of it.

13 Q This part of it is Cape May City?

14 A Yes.

15 Q Is this the area of Cape May City?

16 A Yes.

17 It is approximately 1500 acres of property  
18 and we have a large governmental facility, the United  
19 States Coast Guard Recruiting Training Center is located  
20 in Cape May.

21 Q Do you have beaches there?

22 A We have long beaches, yes.

23 Q How long are the beaches?

24 A The length of our entire beach is approximately  
25 two miles in sections of our beach itself and as wide as



8

1

Coldren-direct

2

400 feet in another section and we have experienced severe erosion.

3

4

Q Is it an easy swimming beach?

5

A It is a very popular, beautiful beach.

6

Q You are not on the bay side, then?

7

A No.

8

Q What other activities take place in the

9

summertime other than swimming?

10

A We have a considerable sport fishing and

11

commercial fishing industry and business in Cape May where

12

people are taken off to the deep waters of the Atlantic

13

Ocean for fishing. We have a very important historical

14

area of our town which is a popular attraction.

15

Q Describe that.

16

A Cape May has the largest concentration of

17

Victorian era properties in the United States and thanks

18

to the Department of the Interior, we have been designated

19

a national historic site.

20

Q What lands or bird sanctuaries or other spaces

21

of that nature in Cape May?

22

A In the political jurisdiction of Cape May

23

there are not, but adjacent to it there are considerable

24

sanctuaries and wetlands.

25

Q Can you describe its economic basis?

9

1

Coldren-direct

2

A Almost entirely tourist oriented.

3

Q Can you tell us what are Cape May City's

4

largest employers?

5

A Year-round it is the city government. In

6

the summertime the motels and restaurants and the tourist-

7

oriented attractions are the largest employers.

8

Q Are there any large American corporations in

9

Cape May?

10

A Not to my knowledge.

11

Q Do any corporations have substantial

12

investments in Cape May?

13

A No.

14

Q What is the cost of capital investment there?

15

A Private funds of families investing in the

16

city, usually family-owned motels and businesses.

17

Q Can you give us a description of what the

18

population breakdown or classification would be of the city?

19

Do you have a lot of elderly people there?

20

A We have a high concentration of elderly

21

people, approximately 71 percent. The young people under

22

18, there is 25 percent or 24 percent. The rest are people

23

between 18 and 65.

24

Q Are there statutes and ordinances or regula-

25

tions that exist in the city of Cape May which control lan/



10 1

2 uses or how it is to be regulated?

3 A Yes sir.

4 Q Is that statute or ordinance given to the  
5 board to prevent a pipeline of coming through the Cape May  
6 beaches?

7 A It gives us the power to do that, yes sir.

8 Q I show you a document and ask you if you can  
9 identify it?

10 A Yes.

11 Q What is it?

12 A This is a recently enacted ordinance No. 479  
13 of the City of Cape May --14 MR. BRUCE: I think we are going to hear  
15 something about a recently enacted ordinance.

16 May I inquire of the witness how recently?

17 THE WITNESS: This was adopted on December 20  
18 of 1976.

19 MR. BRUCE: This year?

20 THE WITNESS: Last year.

21 MR. BRUCE: Last year, yes.

22 We object.

23 THE COURT: Sustained.

24 MR. HYMAN: The Government joins in that.

25 THE COURT: Do you want to mark it for



11 1

2 identification?

3 MR. KAUFMAN: Yes, T-207

4 THE CLERK: So marked. T-207 for identification.

5 Q Does Cape May have a local planning board?

6 A Yes.

7 Q How long has it had that planning board?

8 A I do not remember. As long as I can remember.

9 Q What does the planning board do?

10 A It rules on matters of zoning. They have  
11 jurisdiction in the preparation of any changes in the zoning  
12 law and also consider subdivision and other factors.

13 Q Prior to the adoption of this zoning statute  
14 were there other zoning ordinances or statutes?

15 A Yes sir.

16 Q Would it be fair to say that this recently  
17 adopted one is essentially a codification without major  
18 changes of the previous zoning code?

19 A That is the fact. It is a state-imposed new  
20 format.

21 Q So that prior to December of 1976 the City of  
22 Cape May did have zoning statutes in effect?

23 A Yes sir.

24 Q Would you say it had zoning statutes in  
25 effect for several years?

12

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Coldren-direct

A Many years.

Q Under those statutes the planning board existed;  
is that right?

A Yes.

Q You were explaining what the planning powers  
of the planning board are.

A Under the new ordinance and long-standing  
ones of the city, it gives the planning board the power to  
consider changes in our zoning laws and authority over  
subdivisions, plot plans and other matters concerning  
zoning. There are nine members of this local board.

MR. KAUFMAN: Thank you.

I move that this be taken into evidence as a  
restatement of what the planning powers were prior  
to the time that the statute was enacted.

MR. BRUCE: That certainly is not the best  
evidence. It was available to counsel and witness  
and they could have come up with regulations in effect  
at the applicable time rather than something that is  
like a characterization --

MR. HYMAN: There are no provisions in there  
of on-site oil facilities that were enacted.

THE COURT: Sustained.

MR. KAUFMAN: Would your Honor take an offer



13

Coldren-direct

of proof if I could get it before the end of the trial, a copy of the old statute?

THE COURT: Certainly. Just sign it as being the proper one and we will assume that signature is made under oath as if you were on the witness stand.

Thank you.

THE WITNESS: It will be done right away, sir.

MR. BRUCE: I would like to object. This is a judicial review proceeding and the witness is offering testimony here in court for the first time about statutes not brought apparently to the decision makers' attention and on the other hand if they were brought to his attention, prepared statements or a transcript of testimony, that would be the way to demonstrate the views of this community were properly expressed.

It is the same objection as I had before.

THE COURT: No. This is entirely different. The point of the preliminary hearing as I understood it was that there was a whole complex of regulations, statutes, zoning processes, municipal regulatory agencies, which had power to affect the operation of on-shore and oncoming onto shore of this proposed oil industry related to the off-shore development,



14

1

Coldren-direct

2

3

4

5

6

7

and that the Secretary as well as the preliminary statements upon which you rely, had ignored virtually, virtually ignored this entire complex of material which might have had a substantial impact on the environment and activities related to the development off shore.

8

MR. BRUCE: Yes, but —

9

10

11

12

13

14

15

THE COURT: The information that this witness gives therefore that there was not only the various statutes which were attached as appendix to the Court's opinion, but a series of the statutes and ordinances, and each one being selective numbers is highly relevant.

16

17

18

19

I don't understand the nature of the objection. It is different from the objection you were making earlier.

20

21

22

23

24

25

(continued next page)

2 MR. BRUCE: I may not have expressed it  
3 clearly. I suspect you can take judicial notice of  
4 regularly enacted ordinances without live testimony.  
5 I am not quarreling with whether these ordinances are  
6 or are not properly before the Court. We are going  
7 to hear from the witness on what is quite clear from  
8 the expressions or the impressions of regulatory  
9 views, enforcement philosophies and what have you.  
10 The position I am taking is that kind of evidence should  
11 have been brought before the decision maker and it  
12 is not proper to take it here.

13 THE COURT: I will be happy to hear you on that  
14 and I will be happy to entertain an objection when  
15 such evidence comes in. As to this regulatory  
16 authority it seems to me it is right on point and  
17 therefore I will take the substitution, if you will  
18 sign it, so we will not have an authentication  
19 problem.

20 Q Does the Town of Cape May have a zoning board?

21 A Of Adjustment, yes.

22 Q Has that board operated under the zoning ordinance  
23 of the town of Cape May over the last period of years?

24 A For many years.

25 MR. HYMAN: Objection.



Coldren-direct

We have a witness who is a member of the City Council. He testified he was a member of the Beach Erosion Control Board. He is now testifying about documents that were submitted or drawn up by the zoning board. Now he is talking about another board they have in their community dealing with zoning. I don't think this witness is competent to talk about that unless he can show the Court he participated in zoning matters in one way or the other, sat on the Board and advised the Board. He is just a citizen and reads the papers and has some political influence in political zoning.

That doesn't make him an expert.

THE COURT: There is nobody here who knows more about Cape May zoning than this man. Do you know any more? I don't.

So he will be helpful to me.

MR. HYMAN: He never served on a zoning board or participated in the process of zoning and never made a decision thereon. It is the same type of testimony that you disallowed concerning opinion testimony.

THE COURT: Do not denigrate citizens.

MR. HYMAN: I love citizens. They pay me.



Coltren-direct

1278

THE COURT: Pursuant to Rule 702 I rule this witness an expert on matters of zoning in Cape May and surrounding areas qualified by virtue of his experience.

MR. HYMAN: I think I am entitled to hear that experience concerning zoning.

THE COURT: Would you like a voir dire?

MR. HYMAN: Yes.

VOIR DIRE EXAMINATION

BY MR. HYMAN:

Q Have you ever served on the Zoning Board Commission?

A No, appointed then.

Q Well you have been appointing then since October of 1976?

A And writing the laws they operate under.

Q Since October of 76?

A Yes.

Q That is after August of 76?

A That is my understanding.

Q You never considered a zoning application to grant a variance or not?

A Myself, that is correct.

Q You never made that consideration?

A That is correct.

BEST COPY AVAILABLE

Prior to my service on the council.

Q And in your everyday work as City Councilman how do you apply the zoning variances?

A We do not apply them.

Q How do you apply the zoning variances themselves?

A We hear cases on zoning matters almost every week.

Q Do you rule on them?

A Yes.

Q After the Zoning Board?

A Yes.

Q You are like an Appeal Court?

A That is correct, City Council approves these matters.

Q When you rule on that do you ever reverse the Zoning Board?

A It has happened.

Q Do you ever agree?

A Yes.

Q What the Zoning Board says or -- well, you can have variance agreements or disagreements with them?

A Yes.

Q How many zoning ordinances did you rule on, zoning applications, since October of 1967?

Coldren-voir dire

A I don't know how many. Several, I will say.

Q May I ask the nature of them?

A One was on the fire and a citizen had to get a variance to rebuild his building.

Q Was it commercial?

A Yes.

Another one was an historical building and they desired to construct it, an addition to this building because we have a national historic site and council has jurisdiction of disapproving or approving that variance based on historical reasons.

Q Did you have anything to do with on site, OCF Oil Facilities?

A We do not have that.

Q Do you have anything to do with that which forbids the construction of OCF on site --

A Our current zoning ordinances in Cape May are permissive ordinances. They do not specifically permit oil related facilities in our City.

Q Do they specifically deny them?

A That is the second part.

Monday, January 3, an ordinance was introduced to specifically prohibit them.

MR. HYMAN: I move to strike that.



Children-voir dire

At the time in question there was not an ordinance in existence that prohibited the siting of on-shore facilities, so that the secretary, even if he took it into consideration could ever put it in the statement. It is not even hindsight or foresight, it is no sight.

MR. BRUCE: The witness only stated January 3rd two days ago an ordinance was introduced. We are talking about legislative problems --

MR. LINE: Mr. Bruce offered a proposed statute by the Assembly of New Jersey and didn't think that was any inhibition.

MR. BRUCE: That was adopted in 75.

THE COURT: Thank you gentlemen, the witness is an expert.

DIRECT EXAMINATION

BY MR. KAUFMAN: (Continued)

Q You were explaining before what the Zoning Board adjustment does?

A It is a five member board with two alternates. That Board hears requests for variances to our normal zoning ordinances.

Q Can you describe your ordinance in the sense of what type it is, permissive uses and everything else that

Coldren-direct

is prohibited.

1282

A No.

Q Well, explain that.

A Our ordinance has a specific provision to permit certain zoning usage. It specifically prohibits certain other zoning uses and does not contain a clause we have discovered that would prohibit everything not mentioned and that law is being corrected.

Q If something came along that wasn't mentioned either as being prohibited or being permitted, does it require a variance?

A Yes.

Q So that anything like an oil pipe line coming through Cape May would require a variance granted by the Board?

MR. HYMAN: Objection, Cape May City.

MR. KAUFMAN: Cape May City, excuse me.

MR. HYMAN: Which is that whole tiny island on that map.

THE WITNESS: It is a great place.

MR. HYMAN: It is not Brooklyn or New York.

MR. BRUCE: We are getting into interpretations not in the administrative record. We object to it on the basis that I have stated.

BEST COPY AVAILABLE



Coldren-direct

THE COURT: I will take a little of it.

Q Are you familiar with the current attitudes of the residents of Cape May on the subject of oil shore dealing?

A I am.

MR. HYMAN: Objection.

THE COURT: Sustained.

MR. HYMAN: That's a lot of opinion polls.

MR. KAUFMAN: I didn't ask that.

THE COURT: Sustained.

Move to something else.

Q Can you state what the consequence of a spill would be to the citizens of Cape May?

A Devastating and irreparable.

MR. LAFITTE: I object.

THE COURT: Sustained.

MR. KAUFMAN: The Court of Appeals said we didn't have evidence as to irreparable injuries.

THE COURT: That was irreparable injury with respect to that order which was required, which required irreparable injury.

MR. KAUFMAN: I want to be sure that subject would be covered.

THE COURT: Ask your question.



Coldren-direct

Q If Cape May, what would the consequences of the spill be to the citizens of Cape May?

1284

MR. HYMAN: Cape May City.

THE WITNESS: The City of Cape May would be devastated economically and irreparable damage to our economy and life style.

THE COURT: That is enough.

Anything further?

Q If a pipe line is sought to be brought through the City of Cape May what would the action of the City Council be?

MR. HYMAN: Objection.

It is highly speculative.

A This witness would deprive the other two councilmen, if they have a right to vote, and that is why I am glad I do not live in Cape May.

THE COURT: Sustained.

MR. KAUFMAN: May I ask what his vote would be?

THE COURT: No. Thank you very much.

Anything further?

DIRECT EXAMINATION

BY MR. LEE:

Q I asked Mr. Jarner this question, do people in New England and New York use the beaches of Cape May City?

Coldren-direct

10 1

2

A Definitely.

3

4

Q Do people of Cape May City use the beaches of New England and New York City?

5

A No, I cannot imagine why.

6

7

Q Did you observe any change in the beach attendance data with regard to Cape May City when the sludge incident occurred in Long Island?

9

A Would you repeat that?

10

11

MR. LA FITTE: I don't believe he can testify to that.

12

THE WITNESS: I didn't hear the question.

13

14

Q Did you observe any effect upon beach attendants in Cape May City when the beaches of Long Island were closed as a result of the sludge occurrence?

15

16

A Yes. We experienced tremendous economic occurrence as a result of that.

17

18

Q Was any study made of the economic affect?

19

20

A Yes, the County Planning Board did an economic study and showed the economic harm this caused to the resorts of Cape May County.

21

22

23

24

25

MR. BRUCE: Before we get another question I object to the two prior ones and move the answer be stricken. I think Mr. Like is talking about an incident in June after the impact statement was prepared. I



Q What are the other two commissioners?

The other two commissioners are what? What are their positions? What are they commissioners of?

1286

A Well, of course, under Title 40, the statute of the State of New Jersey, each commissioner is delegated certain responsibilities in a department. I as the mayor have safety -- public safety. One of the commissioners is director of public parks and property. And the third is the director of revenue and finance.

Q How long have you lived in Wildwood?

A Twenty-five years.

Q What other occupations do you engage in to earn your living other than as mayor?

A I am an accountant. And I also have an interest in a restaurant and a motel.

Q How large is Wildwood in the wintertime?

A Population-wise?

Q Yes.

A Approximately 4110.

Q How large in the summertime?

A Approximately 125,000 people.

Q Can you give us the approximate number of jobs there are in the summertime? If you can.

A Yes. I had checked those figures. And it's



1 in the area of eight to ten thousand jobs.

2  
3 Q Will you describe physically — first, will  
4 you point out on the map where it is? Is this it down here,  
5 the area of Cape May?

6 A The City of Cape May is in here.

7 Q I will hold it up.

8 A This is it.

9 Q What are the other communities along here?

10 A First of all, you have to understand that Wildwood  
11 happens to be in the middle of a five mile beach consisting  
12 of North Wildwood and Wildwood Crest. The population of  
13 the three municipalities together — we are in close  
14 proximity. According to the other community, there are  
15 probably 15,000 year-round and a quarter of a million  
16 people during the summer months. Wildwood being the  
17 commercial municipality of the three and provide the  
18 facilities to accommodate the entire 250,000 who come into  
19 the area because of what we have to offer.

20 Q Is this the entire beach from up here to the  
21 end down here?

22 A Most of it, yes.

23 Q What is this part down here? Is that a —

24 A Lower township area, I think you are referring  
25 to. This is developed in the — well, since this map has

1  
2  
3 been printed, contracts for -- well, there is a Holiday Inn  
4 in that area and a few other motels.

5 Q Is there a bird sanctuary or wetlands or  
6 anything along the beach in this area?

7 A Not in our particular area. But there is a  
8 bird sanctuary north of us.

9 Q How wide is that beach?

10 MR. HYMAN: Which one?

11 MR. KAUFMAN: Wildwood.

12 THE WITNESS: For the City of Wildwood, it  
13 is 1,700 feet.

14 Q Is that true along the whole area?

15 A No. Wildwood. I'm speaking of Wildwood and  
16 Wildwood Crest. We have extremely large beaches. There  
17 are other areas in Cape May County that have not been as  
18 fortunate as we have concerning erosion. Their beaches are  
19 not as large.

20 Q Their beaches are not as large as yours or --

21 A Ours are about the largest in width.

22 Q Okay. How is the -- is the condition of the  
23 swimming -- I mean is that highly popular?

24 A Excellent swimming area. Gradual slope. We  
25 haven't had any casualties in drownings in many, many years.

Q What are the other activities that take place



1 in Wildwood in the summertime?

2 A Besides taking advantage of the beaches to  
3 the ocean waters?

4 Q Yes.

5 A We have five beaches, an excellent boardwalk  
6 that extends to the City of Wildwood. We have boating.  
7 We have a lot of drinking.

8 Q Will you --

9 A We have everything you need for a good  
10 vacation.  
11

12  
13 (continued next page)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



Q Will you describe Wildwood's economic base?

A Economically? It depends on tourism. Without tourism, we don't exist.

Q Who are Wildwood's largest employers?

A The largest employer would be tourism. You know, people. Motel operators, restaurants, fishing industry, and, of course, the municipality of the City of Wildwood.

Q Are there any large well-known American corporations who are substantial employers in Wildwood?

A In the City of Wildwood we have McDonald's. It just opened last year. I assume you are referring to that type.

Q Are they a large employer?

A They employ about a hundred and some people. And you have Ramada Inn and Howard Johnson's Restaurant, the third nationally known organization.

Q Any industrial corporations?

A No sir.

Q Do any of those corporations, other than those who built the motels or the McDonald's, any of them have substantial capital investments in Wildwood?

A Oh, sure. Any investment in Wildwood, of course, is a substantial investment.

Muziani-direct

Q What I was asking you, any large American companies that you know of who have substantial investments?

A Wildwood is primarily a community that has a family-type of -- people coming in to invest in this area -- no, we have no syndications, no corporations, none of that. They are all small people who earn their monies and saved it and invested it in our city.

Q Can you describe Wildwood's population by age classification? The wintertime population, is it a mixed population or is it a --

A No, we've got 20 percent senior citizens. Approximately 25 percent under 18. And 50, 55 percent between 18 and 65 years of age.

Q Are there state ordinances or regulations that exist in Wildwood which control land uses or can be used to regulate land use?

A Yes sir.

Q Have they existed for a considerable period of time?

A Many, many years.

Q I show you a document marked Plaintiff Exhibit for identification T-204 and ask you if you can identify it.

A Yes, I can. Let me look at it.



3 1 Q What is that document?

2 A It's an ordinance, City of Wildwood.

3 Q Dated?

4 A Dated, if I recall, June 2, 1964, with a  
5 number of amendments that have been initiated since.

6 Q What is the date of the last amendment?

7 A The date of the last amendment is '68.

8 Q Are there a couple in '73?

9 A I think there is. Yes, I beg your pardon.  
10  
11 July 1, 1975.

12 Q Will you describe this as the same kind as we  
13 have been talking about before Mr. Jarmer testified as being  
14 a permissive ordinance?

15 A Yes.

16 Q That is, it had certain permissive —

17 A Provisions.

18 Q Certain activities permitted and everything  
19 else requires a variance?

20 A That's true.

21 MR. BRUCE: Before we get further into this,  
22 although you haven't moved those into evidence, the  
23 witness is testifying to them, and I am not quite  
24 sure what the point of all this is, except to show  
25 that there is a coastal community which has zoning



Muziani-direct

ordinances, which one would expect to be the case. I do know, however, that Mr. Muziani testified before the administrative hearing judge and the panel on Sale 40. He didn't bring with him those ordinances. He didn't suggest that the draft environmental impact statement was inadequate because the ordinances weren't referenced in it. I have the same kind of objection that I articulated before the judicial review proceeding and I don't see the point of bringing in this kind of testimony --

THE COURT: I will permit it.

Mark it.

MR. PICCIANO: May I make one -- may I address myself to Mr. Bruce's similar objection all along? I would like to remind the Court and Mr. Bruce that this is not an action purely under the administrative proceeding. This is an action under NEBA. And I know of no law, no case law that precludes testimony being considered which was not previously given at an administrative proceeding assuming that that is not an action under the APA --

MR. BRUCE: If Mr. Picciano had read the Government's memorandum dated, I believe, November 2nd, submitted prior to the status conference that we held

Muziani-direct

5 1  
2 with your Honor in that month, he would be aware of  
3 the significant body of law that under NEBA you do  
4 not have a right to trial de novo. There has to be  
5 a special showing as to the --

6 THE COURT: All right.

7 MR. BRUCE: And no special showing has been  
8 made re.

9 THE COURT: Yes. It is not a clear question.

10 All right, I will admit it.

11 THE CLERK: Plaintiff's Exhibit T-204 marked  
12 in evidence.

13 Q Under that statute, do you have a local  
14 planning board?

15 A Yes sir.

16 Q Are you a member of that planning board?

17 A I am. I have been for the five years that I  
18 have been in office.

19 Q What does the planning board do?

20 A The planning board administers provisions  
21 concerning state and Federal regulations. It also evaluates  
22 requests for subdivisions of land. It will hear various  
23 ordinances that qualify among the planning board. It  
24 concerns itself with the master plan. It concerns itself  
25 with the development of the city and makes recommendations



6 1 before the commissioner as to the development of the city.

2  
3 Q Does the statute itself give either the  
4 planning board or any other body in the city the power to  
5 prevent pipelines from coming through the Cape May beaches?

6 MR. JENSEN: Objection.

7 THE WITNESS: The planning board makes  
8 recommendations before the commissioner. The  
9 commission will make the --

10 THE COURT: Don't answer.

11 MR. JENSEN: The statement speaks for itself.  
12 I don't think there is any need for his opinion as to  
13 what the state authorizes or doesn't authorize.

14 THE COURT: I will permit it. You may answer.

15 Q Is it the Board of Commissioners that would  
16 have the right to decide on the variance?

17 A No. Our -- there are certain variances that  
18 the zoning board has the authorization to grant.

19 Q Let's state specifically with a pipeline or  
20 other oil-related facility. Would it be the Board of  
21 Commissioners who --

22 A It could be the Board of Commissioners.

23 Q It would be the Board of Commissioners who  
24 would decide that?

25 A Yes.



1  
2 Q Is that what you are on, the Board of  
3 Commissioners?

4 A Yes.

5 Q That's you and two other commissioners?

6 A That's correct.

7 Q What would the consequences of a spill be to  
8 the Wildwood citizens if there was a substantial oil spill  
9 either from the pipeline or a tanker?

10 MR. BRUCE: This is the same question. I  
11 think your Honor has sustained the objection to it.

12 MR. KAUFMAN: No, your Honor.

13 THE COURT: Based on the danger, I will allow  
14 it. I don't think it's relevant.

15 Q What would the consequences be of an oil spill  
16 if an oil spill were to hit Wildwood?

17 A Certainly it would have a devastating effect on  
18 the economic loss of revenue, loss of jobs, loss of property  
19 value, to say nothing concerning the loss of the aesthetic  
20 value.

21 Q Do you think that that income would be  
22 replaceable?

23 A Replaceable? Certainly not. I don't think so.

24  
25 (continued next page)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q I show you a document and ask if you can identify it?

A Yes sir.

Q Will you tell you Court what that document is?

A This is a resolution we passed.

Q Who is, "we?"

A Board of Commissioners, in December -- December 19th, 1972. And in essence, it is to protect the city and its beaches from water waste. We were concerned about ocean dumping at that time. We passed a resolution opposing ocean dumping. There was legislation that had been talked about.. We were also considering of course the impact it would have on our economy. And we were trying to initiate a resolution that would give us the protection that we thought we needed.

Q I direct your attention to the first paragraph of the resolution which starts, "Now therefore --" I ask you what was the subject of that resolution?

MR. BRUCE: We have the same objection previously articulated.

THE WITNESS: I don't believe that this is helpful.

MR. KAUFMAN: Your Honor, I want to introduce into evidence a resolution that had -- that represents the opinion of the Board of Commissioners of Wildwood



Maxiani - direct - Kaufman

and ask if that resolution is still in effect? I want to introduce to the Court that evidence because it is specific evidence with respect to oil spills and things like that in the community and has a direct reference to what your Honor's opinion is. It is quite specific.

THE COURT: All right. It's received now. You better move the resolution into evidence.

MR. KAUFMAN: Pardon me?

THE COURT: You have the document itself. You better offer that.

MR. KAUFMAN: Yes. I simply wanted to state what it was about.

THE COURT: Let's move ahead.

THE WITNESS: O.K.

MR. KAUFMAN: Well, I think the Court just offered it in evidence. All right. I offer into evidence this resolution.

MR. BRUCE: Objection.

MR. KAUFMAN: T205.

THE COURT: All right, admit it.

THE CLERK: T-205 marked in evidence.

MR. KAUFMAN: 204 is in evidence?

THE COURT: Yes.

THE CLERK: Yes.

BEST COPY AVAILABLE



Muziani - direct - Kaufman

Q Based on the existence of the resolution that you have just presented, the resolution of the Board of Commissioners, can you state what the result would be if a vote were to be put before your board of commissioner as to the bringing of a pipe line through the beaches of Wildwood?

MR. JENSEN: Objection.

THE COURT: Sustained.

MR. KAUFMAN: I have no further questions.

DIRECT EXAMINATION

BY MR. LINE:

Q You testified earlier, Mr. Muziani, that the population swells considerably during the summer months, correct?

A Yes.

Q Do you get a large number of visitors from New York and New England?

A We get some people from New York, yes.

Q In the office of Technology assessment report which was offered in evidence and received in evidence earlier today, there is a statement, page 74, which reads, that large numbers of fishermen from New England and the S. Atlantic states operate in the offshore region nearby. They were referring to New Jersey. Is that true, to your

knowledge?

A Yes, it is.

C It also states -- I am reading from page 74 -- the number of foreign fishing ships cited was more than 100 in one month in the mid-Atlantic during the past year. Is that true, to your knowledge?

A Yes.

C Do you know whether or not the citizens of your area have occasion to use the beaches of Long Island or New England for their summer months?

A No sir. No one leaves our area to go to New England or Long Island beaches. I don't think so.

MR. LIKE: No further questions.

THE COURT: Any cross-examination?

CROSS-EXAMINATION

BY MR. JENSEN:

C Now, mayor Muziani.

A Muziani.

C Muziani. I believe you testified that you own an interest in a restaurant and hotel?

A Yes sir.

C Would you say you get more customers in the summer or in the winter?

A Closed in the winter. Only operate 5 months out



Muziani - direct - Kaufman

of the year.

Q So by and large you are satisfied with the tourist based economy for your community?

A Am I satisfied? I am satisfied with the way things are.

Q Would you say it was in your self interest to have such a tourist based economy, given the nature of your financial interests?

A I would say so.

Q It's true, is it not, that you submitted a statement on behalf of the city of Wildwood to the Department of the Interior in connection with resale 40 and at the public hearings that were held at Atlantic City? Do you remember such a statement?

A Sure.

Q Did you indicate anywhere in that statement that your city might use its zoning laws in any way to prohibit the development of the onshore facilities or to prohibit the landing of pipelines in your community?

A I can't remember the actual -- I certainly thought that would have been included. It is certainly implied.

Q But you don't remember?

A I can't say in fact because I haven't looked at

1  
2 that statement for a few months.

1302

3 Q These two resolutions that were discussed in your  
4 testimony with Mr. Kaufman, was there any discussion of  
5 those resolutions and the possible effect they might have  
6 on OCS activities in the statement you submitted to the  
7 Department of Interior?

8 A At one time I think I made a statement of that  
9 kind in Atlantic City. Are you making reference to one --  
10 I think another location where we had to come to. I  
11 attended a couple of meetings. I don't recall where, but  
12 I think on one time we did -- we did emphasize that one point.

13 Q I show you a statement dated January 29th, 1976.  
14 Do you recognize this statement?

15 A That's correct. Yes. But we have submitted other  
16 statements as well. I don't recall in which one we made this  
17 statement about what you are making reference to.

18 Q Is there anything in this statement concerning  
19 these resolutions and their effects on OCS development?

20 A The resolutions themselves?

21 Q Yes.

22 A I don't think so. Not the resolutions.

23 Q Is there anything in this statement that would  
24 indicate that your community intends to prohibit the landing  
25 of pipelines?



Muziani - direct - Kaufman

A I would think they would have been included in the statement because that was our intent.

Q Will you review it and tell me if you find any such statement?

THE COURT: Is it in there?

MR. JENSEN: No.

THE COURT: All right.

THE WITNESS: You say it's not in there?

Q No such statement.

A We submitted several.

Q Another statement? To whom did you submit this statement?

A Probably at another meeting in Atlantic City.

Q That's this statement, this hearing.

A Another meeting. We attended two meetings. It was more than one meeting. More than one statement. I got it in the file. I will look it up.

Q This is the -- is this the statement you submitted at the public hearings on the resale 40 held in Atlantic City?

A Yes.

Q Now, are you saying you submitted another such statement in the same connection or with respect --

A No. Another meeting. I am not too sure if it

9 1  
2 was this for the sale of track 40 or not. but -- we  
3 emphasized our opposition not to have the pipeline around  
4 our beaches.

5 Q This is your official statement on behalf of  
6 the city of Wildwood that was submitted to the department  
7 of the Interior?

8 A That's the statement where we had desired the  
9 need for insurance protection. We haven't gotten it as yet.

10 Q Now, I believe you testified that one of the  
11 larger employers in your community was McDonald's?

12 A Yes.

13 Q How did they get the zoning to open their  
14 establishment?

15 A How did they get the zoning? Because they were  
16 zoned for a commercial area. There was nothing preventing  
17 it from happening.

18 Q And are there such other vacant commercial  
19 zoning available in your community?

20 A Not too many.

21 Q Is there any industrial zoning in your community?

22 A Very, very little if any.

23 Q Well, is there any?

24 A Not that I know of. What is your description of  
25 industrial? What do you mean by that?



10 1

Muziani - direct - Kaufman

182

2

Q Well, you are familiar with the zoning law?

3

A Yes..

4

Q I believe that was your testimony. It sets

5

up different kinds of zones, residential zones, commercial

6

zones

7

A Right.

8

9

(Continued on the next page)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

TJR4

JB/flp

1  
2 Q Does it contain an industrial zone of some  
3 kind?

4 A Depends on what context you're talking about  
5 industrial. You mean with smoke stacks? I consider  
6 industrial part commercial. Now, we have commercial--

7 Q Now is your commercial zone defined?

8 A Now is it defined?

9 Q Could you build a gas refinery here?

10 A Certainly not.

11 Q In your commercial zone?

12 A No.

13 Q Is there any zone in your community which  
14 would allow the building of that kind of facility?

15 A We prohibit it.

16 Q What about a pipe line coming into your  
17 community? Would that be compatible with the use of your  
18 commercial zoning?

19 A No. You will find it prohibited.

20 MR. ZANTMAN: If the Court please--

21 THE COURT: No. Let him finish.

22 Q Have you in your experience as Mayor in your  
23 participation on the zoning board ever set on and granted  
24 an application for a variance for a commercial or industrial  
25 structure?

BEST COPY AVAILABLE



1307

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A I don't sit on the Zoning Board. I sit on the Planning Board.

Q Well, in that capacity you have been involved with applications for variances?

A Those requests are made before the Board of Commissioners. On those circumstances I have passed on variances, yes.

Q And have such variances been granted?

A Yes.

Q In your experience --

A Yes, we have agreed and disagreed with the Board, both the Zoning Board and the Zoning Board of Adjustment.

Q This would be a normal way of -- a normal way in seeking to build in a particular zone?

A That's correct.

Q Can you describe for the Court what kind of communication you have or relationship you have with the Cape May County Planning Board?

A The Cape May Planning Board does submit to us periodically memoranda indicating certain aspects of the operation of the City that might be related to the County. I heard earlier the testimony of Mr. Jarner and I can recall that we received that memo from Mr. Jarner concerning the

1 City initiating a position on off shore drilling back in  
2 1975. I think it was. We didn't think it was strong enough  
3 but we --

4  
5 Q Did you approve of this recommendation that  
6 Mr. Jarner testified about?

7 A Yes.

8 Q So you are one of the two or three communities  
9 he referred to that approved the recommendation?

10 A No. We approved it, but we didn't adopt his  
11 recommendation. We went ahead and adopted our own.

12 Q Did you communicate the differences to Mr.  
13 Jarner and the Cape May Planning Board?

14 A We have been in communication at various times  
15 on other matters as well as this one.

16 Q Do you receive any funding from the State of  
17 New Jersey for planning activities?

18 A No, sir.

19 Q So that all of your planning activity is funded  
20 by local revenues raised?

21 A Right. We do have a consultant which we engage  
22 on our own.

23 Q Have you -- has your Planning Board ever had  
24 occasion to meet with the officials from the State of New  
25 Jersey concerning proposed development, let's say, in the



RT-51

1 coastal zone?

2 A We have had occasion to meet with them concerning  
3 environmental problems, sewer problems. Specifically concerning  
4 offshore drilling, I think not.  
5

6 Q You never met with them concerning possible on  
7 shore development from the OCS facilities?

8 A By the State officials?

9 Q Yes.

10 A No, not that I know of.

11 Q Have the State officials ever communicated to  
12 you any information about proposed development that might have  
13 affect your municipality?

14 A To be honest about it, we never got too much  
15 information from the State to begin with.

16 MR. JENSEN: I have no further questions.

17 MR. BRUCE: Very brief cross-examination, your  
18 Honor.

19 Just as a formal matter, the witness' prior  
20 statement as to the administrative procedure or process  
21 was referred to, but I don't think it was ever marked.  
22 Or am I mistaken?

23 MR. KAUFMAN: What?

24 MR. BRUCE: The statement he made in Atlantic  
25 City that he examined and affirmed was his of January



26th, 1976 --

MR. KAUFMAN: I have it here.

THE COURT: You wish to offer it?

MR. BRUCE: I would offer it into evidence.

THE COURT: All right, mark it.

MR. BRUCE: Let me give that to the witness.

MR. KAUFMAN: This is your copy.

MR. BRUCE: I am sorry.

I am referring to still another document which is a transcript of the proceedings of that same date in Atlantic City on that same matter. I suspect he probably -- well, let me ask him this.

CROSS-EXAMINATION

BY MR. BRUCE:

Q Did you simply read this written statement into the record? Is that how you gave your evidence?

A I think I gave the statement, yes, made some remarks extemporaneously after the statement was presented, if I recall correctly.

Q During that statement did you not say that you recognized that the development of the OCS was an issue of national concern that would take place in accordance with the consideration of national interest and national objectives?

A Yes.

Muzianl-cross

Q And thus, your position wasn't that it should go forward because that was a national issue, but rather if it went forward there should be a fund, an insurance provisor of some sort that would help communities like yours.

A My reason for saying that, sir, was the fact--

Q I am not asking for your reason. I am simply asking if it is not so that that was the position you took?

A Yes.

That was part of our position, yes.

Q And you were aware, are you not, of continuing legislative concern at the Federal level, and, indeed, at the State level of New Jersey for compensation?

A I am aware of it.

Yes, they signed the Bill today in Camden.

Q The State of New Jersey Bill?

A But nothing has happened with the Federal Government.

Q But it's under consideration?

A It's been under consideration for some time.

Q And the fact that the sale has been held is -- has not prevented it from being adopted in the future and would be applying to your concern, is that not so?

A I don't know. I am not too sure what it is they are considering.



MR. BRUCE: Sure. The City of Wildwood.

Q How many communities approximately are there in the Jersey Shore? Do you have any idea?

A How many communities in New Jersey?

Q Towns, townships. Not communities. I am talking about municipalities.

A In the --

Q Along the Jersey -- take it from Sandy Hook down to Cape May.

A I can't give you any --

Q Several hundred?

A Possibly.

Q And they all handle their resolutions about the same way in terms of their publications and their availability to the public; is that right?

A I am sorry, sir. I can't -- I can only speak for the City of Wildwood. I don't know what the others do.

MR. BRUCE: I have no further questions.

THE COURT: Anything further?

Any redirect.

MR. KAUFMAN: Just one question.

REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q I would like to read to you a statement and ask

Muziani-cross

1  
~~xxxxxx~~

2a 2

you whether you agree or disagree with this statement. And  
this comes from Exhibit N in evidence, T201.

MR. KAUFMAN: This is the --

THE COURT: Is it admitted?

MR. KAUFMAN: Yes, it is in evidence, T201.

(continued next page).



385  
/flp.

1313

191

Muziani-redirect

Q I just want to ask you whether you agree or disagree with this statement.

MR. BYMAN: What page?

MR. KAUFMAN: Page 150.

Q "Some State and local officials fear that their concerns would be overwhelmed by the combined forces of the Federal Government and the energy industry joining in the search for new sources of energy. In August 1973, Thomas O'Neill, former Assistant Commissioner of Environmental Protection for New Jersey, said: 'There is a fear among coastal residents and officials that they're not going to have any control. They see a combination of big Government and big oil coming down on them and you've got some poor commissioner in Wildwood, New Jersey, who feels like he's standing up there all alone against this juggernaut.'"

Do you agree with that statement?

A Yes, I agree. I'm making reference to myself.

MR. KAUFMAN: I have no further questions.

MR. BRUCE: Could I ask just one further question? I am sorry.

RECROSS-EXAMINATION

BY MR. BRUCE:

Q You refer to the decisions of your Zoning Commission, your Zoning Board in your direct testimony.

Muxiani-recross

2 1  
2 These are not final, are they? I mean there is a judicial  
3 review proceeding that can be had after those decisions are  
4 made?

5 A On ordinances?

6 Q On your application of zoning rules and what  
7 have you, variances from the zoning ordinances from their  
8 requirements?

9 A Are you suggesting now they can make appeals?

10 Q I am asking a question as to whether or not  
11 one can go to a higher authority, so to speak to review  
12 the decision that the town of Wildwood zoning authorize to  
13 make the --

14 A In the five years I have never known it to  
15 happen as yet.

16 Q I am not asking whether it has happened.

17 A I doubt it, but I don't know. I doubt it.

18 Q Is it your testimony that there is no official  
19 review?

20 A That's the form of how local Government works.

21 DIRECT EXAMINATION

22 BY MR. PICCIANO:

23 Q Mr. Muxiani, with respect to the resolution  
24 that you referred to a moment ago passed by the City of  
25 Wildwood, if a representative of BLM telephoned you or sent



afternoon.

He may have been here through the afternoon.

MR. THOMAS: Yes.

THE COURT: All right, swear the witness.

THOMAS A. THOMAS, called as a witness, being  
duly sworn by the Clerk of the Court, testified as  
follows:

THE COURT: Your occupation, sir?

THE WITNESS: Director of Ocean County Town  
Planning Board.

THE COURT: You heard the testimony of these  
other people from --

THE WITNESS: Yes.

THE COURT: Continuing from Cape May.  
Is your testimony substantially similar on direct and  
cross?

THE WITNESS: It would be substantially the  
same, yes, sir.

THE COURT: In what respects would it be  
different?

THE WITNESS: The one major difference I  
believe, your Honor, would be the fact that while  
the draft and final environmental impact statement  
did provide for a listing and a description of the  
backbay areas which are very substantial in Ocean

Thomas-direct

Bay County represent 50 some of the backbay area. There was no significant analysis made of the cleanup activities if an oil spill should occur and give into the backbay area of the coastal area of New Jersey. And we have also introduced some evidence about the extensive amount of lagoon development in Ocean County which represents about 93% of all the lagoon development in the State of New Jersey. And those again are Bay oriented facilities.

THE COURT: They increase the coastal line.

THE WITNESS: Well, they increase the coastal line by actually tripling -- because of the bay area triple the amount of water frontage within the county of Ocean, so that we would have approximately 150 miles of coast line and bayfront area.

THE COURT: All right. Is there any cross-examination of this witness?

MR. KAUFMAN: There was one other aspect.

THE COURT: All right.

MR. KAUFMAN: Mr. Thomas was going to talk about one other thing. That was the question of water supply and what the significance is in terms of the location for the pine barrens and being able to get water for industrial development within Ocean County. And if we



can get a comment on the --

THE COURT: All right.

THE WITNESS: Your Honor, the primary water supply in Ocean County comes from the pine barren region which Dr. Mitchell alluded to in his original testimony. And the pine barrens water basically would flow into the bay and would be a significant factor in the benthic and also the estuary development of life within the bay area, the clam and fishery food chain area. And any contamination either of the bay or of the water from the pine barrens which would have significant impact on that whole area.

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q What I want to ask is, are there places within the County where there are unrestricted access to water where industrial development can go without having to get some kind of a variance?

A There are no such areas in Ocean County.

Q Those variances would come either through local areas or through the Planning Board which controls the drainage and water supply; is that correct?

A That's correct.

Q All right. Now is there any place in Ocean

Thomas-direct

County that you know of where processing plants or down stream chemical plants or refineries or other related oil facilities could go without enormous opposition and get a variance?

MR. ITMAN: We object.

Q Without having to get a variance --

THE COURT: You may answer that.

THE WITNESS: There is one chemical plant currently in the county of Ocean, and because of the various pollutants which emanated from that stand there did develop a great deal of opposition to any further heavy industrial uses within the county. In the late '60's and early 1970 many municipalities passed ordinances prohibiting any type of petro chemical operations within their own boundaries. Also, along the coast, such as Wildwood and other areas of Cape May, municipalities do not permit industrial uses.

Q Now, to your knowledge, do the municipalities and their zoning regulations have the power to prohibit all related uses such as pipe lines and other downstream facilities?

A Yes, they would have that power.

Q That would be true throughout the county?

A Yes, it would be.



1  
2 With one exception. There is one municipality in  
3 Ocean county, one of the rare ones in the State of New Jersey,  
4 which is on the coast, Seaside Heights, which does not have  
5 the zoning ordinances at this time. That municipality is  
6 fully developed. However -- and there is no industrial  
7 within that municipality.

8 Q Would they have the power to pass an ordinance  
9 if they wanted to?

10 A Yes, they would.

11 Q How long would it take them? Do you know?

12 A I have no idea.

13 MR. BRUCE: That obviously calls for speculation.

14 MR. KAUFMAN: That shortens it.

15 THE COURT: All right.

16 MR. LIKE: Just on the question of access  
17 between the region, your Honor. The question I  
18 put previously.

19 THE COURT: All right.

20 DIRECT EXAMINATION

21 BY MR. LIKE:

22 Q Do New York and New England residents,  
23 recreationists, fishermen, use your local area?

24 A Ocean County is really the dividing line between  
25 Southern and Northern New Jersey in terms of the tourist trade.

1 The South Island -- basically in the southern portion of  
2 Ocean County is basically the Philadelphia oriented market,  
3 similar to Cape May and Atlantic City and so on. In the  
4 northern part of the county, from Seaside Park to the  
5 north up to Bayhead and Point Pleasant Beach, there is a  
6 great deal of orientation toward New York and New York  
7 City particularly. Many of the residents, summer residents  
8 and seasonal residents of New York City and the New York  
9 Metropolitan area do in fact own property and do reside  
10 in Ocean County much of the year. There is also in the  
11 southern part of the county some commutation of persons to  
12 the City on a regular basis. It is a two and a half  
13 hour trip, but they do make the trip. And there is also  
14 an exchange basically of New England residents to our  
15 area. And I for one spent part of my summer this year in  
16 New England. So I can tell you that there is also an  
17 exchange in the other direction.  
18  
19  
20

21 (continued next page)  
22  
23  
24  
25

BEST COPY AVAILABLE



1321

Thomas-direct

1:BD 3pm6

1  
2 Q Is there a similar annex in the offshore  
3 fisheries, boating activities?

4 A Yes. In Ocean County particularly, we are  
5 at the beginning of the National Intercoastal Waterways.  
6 So that basically the boating traffic from the New York  
7 area will come into Ocean County or adjacent to it as it  
8 goes on its way to the south. So that there is a lot of  
9 interaction of New York boating and New England boating  
10 also in our area. There are several fishermen and fishery  
11 industries which have locations both in Ocean County and  
12 also in Maine and other parts of New England. So that  
13 there is a lot of interaction basically with Ocean County  
14 and the New England area.

15 Q Finally, how about foreign fishing activities  
16 in your waters?

17 A Foreign fishing activity is quite extensive  
18 as it is within the -- the rest of the state of New Jersey.

19 THE COURT: All right, any cross?

20 MR. HYMAN: No questions.

21 MR. BRUCE: Just one line of interrogation.

22 CROSS-EXAMINATION

23 BY MR. BRUCE:

24 Q Mr. Thomas, are there any pipelines running  
25 under any of the Atlantic City beaches in Ocean County?

Thomas-redirect

## REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q What would be the consequences of an oil spill to the citizens of -- and the property owners of Ocean County?

MR. DRUCE: We have the same objection.

THE WITNESS: That question I think is quite pertinent because Ocean County, as the other coastal areas, it is particularly involved in resort tourist trade. And as Mayor Muziani had mentioned, it would have an adverse impact on the income of the resort tourist industry. It would have a devastating effect on the property value and so on. And the recent sludge problem has resulted in figures of in excess of \$250 million of damages to the fishing industry alone off the New Jersey coast. So that when we are talking about damages, they can be quite substantial and represent several millions of dollars just to the fishing industry alone.

If I may, your Honor, the problem of the tourism -- I think I mentioned previously, it is a very fickle trade. And as Nassau County and Suffolk County found out this year, and as we found out in previous years with red dye and other sorts of



Thomas-redirect

pollution within the bathing beach areas of the county, that there is a wholesale exodus basically from the resort tourist areas, particularly the beach area, and the cancellation of seasonal residential residence if there is even a suspicion that there is pollution of any type in the bathing areas. So it does have an immediate impact. And it's an irreparable damage in terms that there is no way that you can make that up over a period of time.

THE COURT: All right, thank you very much.

(Witness excused.)

THE COURT: Any other witnesses?

MR. KAUFMAN: Your Honor, the other witnesses that I have are the -- they are elected officials. They are elected officials from Ocean county. Today they are at Governor Byrne's office to witness the signing of the bill.

THE COURT: What is the point of having them? They will testify to essentially what the other witnesses have said.

MR. KAUFMAN: Yes.

THE COURT: Does anybody want them? I would hate to bring them up. Why don't we stipulate that

5 1 their testimony would be essentially the same.

2 MR. LIXE: On direct and on cross-examination.

3 THE COURT: Direct and cross.

4 MR. HYMAN: No sir.

5 THE COURT: All right. Give us the list of  
6 those witnesses that you would have produced, and  
7 call them and tell them not to come up here.

8 MR. HYMAN: The stipulation is just too varied,  
9 especially on the question of statutory land use.  
10 I don't think, in view of the Court's opinion as to  
11 how important that issue is, that the Government is  
12 prepared to stipulate.

13 THE COURT: If you want to bring these  
14 officials in, you may. But I think you ought to  
15 reconsider that.

16 MR. KAUFMAN: I'm willing to stipulate. I do  
17 need to know because I have to get --

18 THE COURT: See what you can work out with  
19 other counsel. We will take a break.

20 All right, do that.

21 MR. LIXE: May I address a question to the  
22 Court? The sludge witness that I have -- I did  
23 consult with counsel for the defendants. They're  
24 not going to object to my tenor of this witness  
25 because of the late designation. However, they have



3

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. KAUFMAN: No stipulation, your Honor. I guess I'll have them in tomorrow morning.

MR. LAPITTE: For all of us there is a stipulation if these people were called they would testify substantially the same as those called today on direct and cross-examination. I don't believe counsel is prepared to stipulate to that.

MR. KAUFMAN: What I had suggested, your Honor, is simply the things the stipulation state, what it is they would testify to, which is they would testify their communities are shore communities, that they are resort oriented, that they have zoning codes, that the zoning codes have the power to prevent oil related facilities coming through and they know they have that power and that there would be irreparable injury which is what my people have testified to.

THE COURT: Why don't you take it in the form the defendant wants to give it?

MR. KAUFMAN: All they're saying is we'll stipulate generally to what is said. For the record, there ought to be what got said- so if there is an appeal --

the court: The record is here. We have the record. I don't see anything, any reason to bring these people in.

4 1 MR. KAUFMAN: I'm just concerned unless we  
2 put into the stipulation what it is, that it won't have  
3 any kind of meaning at all because there are differ-  
4 ences.

5 MR. LAFITTE: Our point is, what they said in  
6 light of the cross-examination, it's the general --

7 THE COURT: The whole thing is in there.  
8 Pursuant to 403, I accept the stipulation of the de-  
9 fendant that they would have testified essentially as  
10 these witnesses have testified. Give me the names and  
11 the positions of the people that are included within  
12 the stipulation.

13 MR. LAFITTE: On both direct and cross-examina-  
14 tion?

15 THE COURT: Both direct and cross, of course.

16 MR. KAUFMAN: Mayor E. Tompkins of the borough  
17 of Seaside Heights; Mayor James Mancini, of the Long  
18 Beach Township; Long Beach, New Jersey. Also Freeholder,  
19 he's a chosen freeholder of Ocean County, New Jersey  
20 and Mayor of City; Leonard Connors.

21 Your Honor, I am concerned about the point being  
22 made that each one of these gentlemen does know what  
23 the nature of the redistributions are --

24 THE COURT: Of course --

25 MR. KAUFMAN: What the powers are.



5

1327

THE COURT: Of course.

MR. KAUFMAN: That there would be irreparable injuries to their community from an oil spill.

THE COURT: Yes, it's all part of the record.

MR. BRUCE: To complete the record, as perhaps obvious to complete the record, we, of course, are not conceding the accuracy of the item, and also we're preserving the same line of objection that we had to the testimony of the Cape May County witnesses, vis-a-vis a judicial review --

THE COURT: Of course.

MR. KAUFMAN: I would have had tomorrow morning their zoning codes to put in.

THE COURT: You can put that in.

MR. KAUFMAN: It may not be necessary.

THE COURT: If you want to put them in. If you don't, don't. It's up to you.

I've before me Plaintiff's Exhibit T226 for identification, the sludge impact study of the Long Island State Park and Recreation Commission of November 5th, 1976, referring to the sludge problem that occurred when -- ?

MR. LIKE: In June of last year, your Honor.

THE COURT: June of 1976. This is a document produced after the lease. If there's an objection,

Davies - direct

226

A I am employed as a principal planner with the Nassau County Regional Planning Board in Hoppogue, New York.

Q How long have you been an employee of the Regional Planning Board.

A Four and a half years.

Q I show you a document marked plaintiff's exhibit T-227 for identification. I ask you to identify this, please.

A This is a resume that I have prepared.

Q Does it set forth accurately your education, experience and professional qualifications?

A Yes.

Q And also your work responsibilities?

A Yes.

MR. LIKE: I offer it in evidence.

THE COURT: Mark it in evidence.

MR. HYMAN: We don't have a copy.

MR. LIKE: I will show it to you.

MR. HYMAN: Can we have an opportunity to look at it?

THE CLERK: Plaintiff's exhibit T-227 for identification marked in evidence.

Q Describe briefly your responsibilities which you have performed since becoming employed by the Nassau-Suffolk Regional Planning Board.



1  
2 A The most recent responsibility has included  
3 the conduct of two contracts that the regional planning board  
4 has with the State of New York covering the outer continental  
5 shelf, consideration in coastal zoning management and in the  
6 coastal management program proper. Prior to those two  
7 contracts, we were involved in an effort financed by the  
8 Department of Housing and Urban Development of the methodology  
9 for the integration of coastal zone and regional planning.  
10 That covers about the last two and a half years.

11 Q Will you please describe very briefly the nature  
12 of the Nassau-Suffolk Regional Planning Board?

13 A The Regional Planning Board is a body -- a  
14 regional planning body created in accordance with state law,  
15 and was created by an act by both county legislatures back  
16 in 1965, and conducts regional planning studies and assists  
17 the county planning commission in both counties in conducting  
18 planning work.

19 Q Is there also an organization known as the  
20 Marine Resource Council, which performs certain responsibilities  
21 assigned to it by the Nassau-Suffolk Regional Planning Board?

22 A The Marine Resource Council is a standing  
23 committee of the regional Planning Board. And it was designed  
24 to act on matters of marine concern and advise the Board on  
25 such matters.

1  
2 Q How long has the Marine Resource Council been  
3 functioning in that capacity?

4 A Since 1967.

5 Q In the course of your employment by the Council,  
6 have you also become familiar with the Suffolk County  
7 Planning Commission?

8 A Yes.

9 Q I show you a document which is identified as  
10 plaintiff's exhibit T-228 and I ask you whether you would  
11 please identify this document.

12 A This is a document prepared by Suffolk County,  
13 Department of Planning, which explains the rules and  
14 regulations that the County Planning Commissioners utilized  
15 in reviewing zoning changes, variances, et cetera, subdivisions,  
16 estimates submitted by the local municipalities.

17 Q By what authority are these rules and  
18 regulations adopted by the Suffolk County Planning Commission?

19 A These regulations were adopted by a vote of  
20 the Planning Commission.

21 Q And are there citations in here to any particu-  
22 lar statute or charter?

23 A Suffolk County charter.

24 Q Is this document a true copy of the rules and  
25 regulations as they now exist?



1  
2  
3 A To my knowledge.

4 Q And for how long has this document been in  
5 existence?

6 A I am not sure of the date.  
7 Revised February, 1973.

8 Q Still in effect today?

9 A Yes.

10 MR. LIKE: I offer this in evidence, your Honor.

11 MR. BRUCE: Your Honor, we haven't had a chance  
12 to --

13 MR. HYMAN: We weren't given copies. I didn't  
14 have an opportunity to look at the last exhibit offered.  
15 I don't think this is the way we planned --

16 THE COURT: No. It should have been given in  
17 advance, particularly since you were here all morning.  
18 Why didn't you give it to them over the lunch hour?

19 MR. LIKE: I should have. I am sorry. There  
20 have been a lot of documents that have been presented  
21 for the first time at the hearing and we have all been  
22 suffering under that handicap.

23 THE COURT: Mark it in evidence, subject to a  
24 motion to strike.

25 THE CLERK: May I have it?

Plaintiff's exhibit T-228 for identification

1  
2 marked in evidence.

3 MR. LAPITTE: I think we do want to register  
4 an objection to the offer.

5 THE COURT: Yes.

6 MR. LIKE: I didn't hear that.

7 MR. LAPITTE: We would object to the offer.

8 THE COURT: Yes. When you can make it more  
9 specific, I will entertain the motion.

10 MR. LAPITTE: On the grounds that we haven't  
11 seen it.

12 THE COURT: Yes.

13 Q Would you tell us, Mr. Davies, what review  
14 powers are exercised by the Suffolk County Planning Commission  
15 with respect to zoning or other land use applications that  
16 are made to the various municipalities on Long Island, and  
17 please call our attention to the particular page in the  
18 exhibit which describes the responsibilities and the  
19 authority of the Planning Commission.

20 A The review powers of the Suffolk County  
21 Planning Commission is described on page 1-1. This describes  
22 a situation in which a municipality -- in this case, a  
23 village or town, must submit various actions to the Suffolk  
24 County Planning Commission for their review and action.

25 As far as zoning is concerned, there is a new



1 zoning ordinance, an amendment to a zoning ordinance,  
2 amendments to a zoning map, a request for zoning variance or  
3 a request for a special permit, these items must be submitted  
4 to the county Planning Commission when they affect real  
5 property lying within one mile of a nuclear power plant or  
6 airport, or within a distance of 500 feet of the following:

7 The boundary of any village or town; the  
8 boundary of any existing or proposed county, state or federal  
9 park or other recreational area; the right of way of any  
10 existing or proposed county or state parkway, thruway,  
11 expressway, road or highway; the existing or proposed right of  
12 way of any stream or drainage channel owned by the county or  
13 for which the county has established channel lines; the  
14 existing or proposed boundary of any other county, state or  
15 federally owned land, or the Atlantic Ocean, Long Island  
16 Sound, any bay in Suffolk County or estuary of any of the  
17 foregoing bodies of water.  
18

19 Q Does the county Planning Commission have a right  
20 to disapprove a change granted by a municipality in response  
21 to an application which comes within the categories which you  
22 have described?

23 A They have the right to disapprove.

24 (continued next page)  
25

1  
2 Q Can that disapproval be overridden by the  
3 municipal effect, and if so, in what cases can it be done?

4 A It can be overridden by the municipality with a  
5 majority plus one vote and the adoption by the municipality of  
6 a resolution stating the reasons for the overriding.

7 Q Are there any instances in which the disapproval  
8 by the Suffolk County Planning Commission is conclusive and  
9 cannot be overridden by the municipality?

10 A Yes. There is a provision whereby the state  
11 agency in charge of environmental affairs, if they so declare  
12 an action -- if they -- in essence, if they are against an  
13 action and the Suffolk County Planning Commission at the  
14 hearing also goes against the action, then that ruling will  
15 prevail.

16 Q Are there any instances with respect to the  
17 rights of joining municipalities wherein the disapproval  
18 action of the planning commission is conclusive?

19 A If there is a dispute involving a piece of --  
20 a particular action, variance, or something to that effect  
21 that affects property within 500 feet of the boundary of the  
22 town or village, and the opposing town or village objects to  
23 that action, then the Suffolk County Planning Commission has  
24 power to settle the dispute.

25 MR. BRUCE: Mr. Like, are you finished with that?



1  
2 MR. LIKE: Yes.

3 Q Do you know whether or not the Nassau County  
4 Regional Planning Board adopted a comprehensive development  
5 plan covering both counties?

6 A A comprehensive development plan was prepared  
7 and adopted by the Regional Planning Board in 1970.

8 Q I show you a document entitled Plaintiff's  
9 Exhibit T229 for identification. I ask you whether this is a  
10 summary of the Nassau County Development Plan.

11 A This is a summary of the Nassau County  
12 Development Plan.

13 MR. LIKE: Your Honor, I ask that this be  
14 received in evidence and that the document be posted  
15 so that it will be on display for my ensuing questions.

16 THE COURT: When was it adopted?

17 MR. LIKE: 1970.

18 THE COURT: Is it still the plan?

19 THE WITNESS: Yes.

20 THE COURT: Unamended?

21 THE WITNESS: There has been, to my knowledge,  
22 at least one formal amendment in land use to that plan.  
23 That amendment affects a small portion of drainage  
24 basin in Great South Bay. And such -- it is not shown  
25 in this map. It involves changing some industrial

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: All right.

MR. LIKE: This information was prepared at great pain and expense. And I think it will help the Court in understanding this, and that it should not be barred because of some technicality of not showing it ahead of time.

THE COURT: It is not a technicality. I have a dreadful criminal calendar. Under the statutes of Congress I shouldn't even be hearing this case because I have to give a priority to my criminal calendar.

MR. LIKE: I appreciate that.

THE COURT: And we just have to proceed.

MR. LIKE: Throughout the course of these hearings, all of the parties have been under the inconvenience of getting material at the last minute. And I don't think that we are in any special category.

THE COURT: All right, show it to them.

MR. LIKE: Your Honor, we are ready to proceed.

MR. HYMAN: I am not ready. Give me another five minutes, please.

MR. LIKE: All right.

Your Honor, counsel are ready to proceed. I would like to also mark this statement. The Suffolk County Department of Planning Rules and



1 regulations is something I called for last night at  
2 10:30 in response to your Honor's suggestion yesterday  
3 that we compile a list of all of the local regulations  
4 that may have a bearing. And, consequently -- and I  
5 should have mentioned this earlier -- there was no way  
6 that I could have served this any sooner. But, in any  
7 event, I am ready to proceed.

8 THE COURT: All right, go ahead.

9 MR. LIKE: We have an offer in evidence of the  
10 comprehensive plan and I ask that it be displayed.

11 THE COURT: Marked in evidence.

12 THE CLERK: Plaintiff's Exhibit T229 for  
13 identification marked in evidence.

14 (So marked.)

15 THE COURT: Why don't you put it on that wall?  
16 It will be easier for the witness to get at it.  
17 We can tack it on.

18 MR. LIKE: I thought we would put it over here  
19 and the witness, with your permission, would approach  
20 the board.

21 Q With the Court's permission, Mr. Davies, will  
22 you please approach the exhibit?

23 Will you please indicate what the recommended  
24 land use is for the shoreline and coastal zone portions of  
25

1  
2 the South Shore as shown in the upper portion of the exhibit?

3           A       The top map here is a proposed land use plan for  
4 1985 for the two county areas, Nassau and Suffolk Counties.  
5 The overall concepts of the plan were based on a spine of  
6 transportation facilities, industrial facilities, commercial  
7 industries along the center portion of the Island from east  
8 to west, and along the north and south shore of the Island  
9 low residential and conservation, recreational use. The only  
10 difference here being that the two fork areas are also in that  
11 major -- in those major categories of use residential and  
12 conservation, but also that there is a significant block of  
13 farmlands on the north fork and a portion of the south fork.  
14

15                   (continued next page)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1  
2 and to the introduction of that exhibit to the extent  
3 that we are talking about these future contingencies.

4 THE COURT: No, overruled.

5 Q As I -- withdrawn.

6 Would you please continue with your testimony,  
7 Mr. Davies.

8 A This plan serves as a guide for the Nassau  
9 Regional Planning Board in reviewing local changes in land  
10 use that are made on a day-to-day basis and also for a direc-  
11 tion toward future growth.

12 As far as the South Shore of Long Island is  
13 concerned, you can tell by the land-use designation on the  
14 map that it is basically a regional low density use all the  
15 way out to Montauk Point. The only recommended commercial  
16 use occurs in very small areas along the South Shore, along  
17 perhaps the Montauk Highway which is in the interior from the  
18 South Shore base, some in Long Beach. There are a few small  
19 commercial areas in the West Hampton Beach area.

20 As far as industrially zoned land, the only  
21 piece along the South Shore that is immediately adjacent to  
22 it is a piece in the Fort Pond Bay area.

23 Q Do you know what the status of the industrially  
24 zoned land is in the Fort Pond Bay Area?

25 A To my knowledge, it is zoned industrial.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Are you familiar with the current zoning of the land uses which are shown on the exhibit?

A As far as current zoning is concerned, the only large block industrially zoned land that exists today is in the area out here around Hapeague Harbor. And that I was informed this morning the State of New York took title to the piece of property just recently in the end of December.

Q For what purpose?

A Parks and conservation.

Q Will you please point to the Great South Bay portion of the map. Do you have any familiarity with the pattern of the underwater land-use in the Great South Bay.

A The Great South Bay is basically owned by the Town of Brookhaven. It is essentially this area in here, with the exception of a large tract of land, underwater land presently owned by the Blue Point Oyster Company. There are other portions of the Bay bottom -- and in this area that are owned by the County -- excuse me -- by the towns involved.

The eastern portions of the South Shore Basin here are owned by the Trustees of the Eastern Townships.

Q By trustees, are you referring to individuals who derive their authority from colonial and royal grants?

A Yes.

Q Are you familiar with the types of matter that



1  
2 come to the attention of the trustee which requires their  
3 approval? I am talking about trustees of underwater land or  
4 town ownership of underwater lands.

5 A There would be a proposal that would involve  
6 dredging of underwater property.

7 Q What commercial valuable resources are linked  
8 with the underwater land which is linked in the Great South  
9 Bay?

10 A The Great South Bay -- this area here is the  
11 most important hard clam production area in the world. More  
12 than half of the nation's production of hard clams comes from  
13 this particular bay with a commercial value, last year, of  
14 approximately 15 million dollars, dockside land value. The  
15 Moriches Bay Area is an important clam producing area. The  
16 Necox Bay Area is soft clam and oyster production area.

17 MR. LIKE: Your Honor, I wanted to particularly  
18 call your attention to the institution of the  
19 trustees who own title to the land-use under water  
20 in the Great South Bay as another layer of authority  
21 which comes in the category of local authority which  
22 your Honor requested we inform you of. And we will  
23 make an effort to obtain as much information as  
24 possible as to the powers of the trustee with respect  
25 to underwater land and report to you on that.

1  
2 Q For example, somebody wished to install a  
3 pipeline in Great South Bay, to your knowledge, would it be  
4 necessary to obtain the approval of the owners of the title  
5 of the underwater land in the Great South Bay?

6 A To my knowledge, it would be since it involved  
7 their property.

8 THE COURT: What is the situation with  
9 respect to pipelines? Is there a right of condem-  
10 nation? Federal Right of Condemnation laying  
11 pipelines?

12 MR. HYMAN: I don't think there is.

13 THE COURT: How do they --

14 MR. HYMAN: Gas pipelines. I was told  
15 that there is a right of condemnation of gas lines,  
16 but not oil lines.

17 MR. LIKE: I believe your Honor raised that  
18 question at the hearing and there was something in  
19 the transcript in last summer's session regarding  
20 the answer by the Government to your question.

21 THE COURT: I don't remember.

22 MR. LIKE: I think there was a reference to  
23 the Federal Power Act having something to say about  
24 natural gas pipelines.

25 MR. KAUFMAN: I think it was agreed by everybody



1 that there is no power to do any condemnation for  
2 oil pipelines; that there may be some for gas  
3 pipelines.  
4

5 MR. HYMAN: Unless we go to war. Unless we  
6 go into another conflict on the War Powers Act,  
7 there is the right of condemnation. But I don't  
8 want to bring that up because we have peace now.  
9 The fact of the world situation changed the United  
10 States --

11 THE COURT: Well, this is not a jest. It  
12 could be an important matter.

13 MR. HYMAN: Under the War Powers Act, your  
14 Honor, there is the right of condemnation.

15 THE COURT: For pipelines?

16 MR. HYMAN: Yes. For anything.

17 THE COURT: For anything?

18 Otherwise we can assume that they couldn't  
19 condemn to run these oil and gas pipelines.

20 MR. HYMAN: Well, I think that there is no  
21 right of condemnation for oil pipelines. I have  
22 been told that there is a right of condemnation for  
23 gas pipelines.

24 (Continued next page.)  
25

1 THE COURT: Would you give me that?

2  
3 MR. TURK: I believe it is in the Natural Gas Act,  
4 but I will check it.

5 THE COURT: Your belief is that under the  
6 federal statute they can run a gas line anywhere?

7 MR. TURK: I believe that came out at the  
8 hearings.

9 THE COURT: I do not recall anything definitive  
10 as to that. I remember some discussion.

11 MR. TURK: I will check and report back on Monday.

12 THE COURT: Give me a brief on it.

13 MR. BRUCE: He was referring to the federal power  
14 of condemnation and not any power that might reside in  
15 the State Government to take local lands to assist  
16 for whatever state purposes. I do not know whether there  
17 is or is not. I am obviously not an expert on the law  
18 of the State of New York. I would, however, be prepared  
19 to say I know of no existing federal power --

20 THE COURT: That is what I am talking about.

21 MR. LAFITTE: It may be a matter of state law.

22 THE COURT: I am going to assume that there is no  
23 power of condemnation, except when I get that  
24 memorandum on gas.

25 It would make a difference as to the exploration



and production of gas, but not for oil purposes.

MR. HYMAN: I do not see what difference it would make. We say if we cannot obtain legal title to a pipeline, the alternative would be tankers. If the Court is pointing in that direction, I think we would stipulate to all the evidence that they are going to put in.

THE COURT: I do not know --

MR. HYMAN: You can write your decision and we will go up on it. I do not think that is the important issue. What the land use would be or what the community, state or municipality says about the right, if they don't want pipelines, they don't get pipelines. That's recognized in the statement. That's recognized in the operating orders, and it is recognized in the stips.

THE COURT: I know that is your argument.

MR. HYMAN: It is not an argument. It is there.

THE COURT: I am entitled to consider the alternatives that I considered this summer --

MR. HYMAN: Yes, your Honor.

THE COURT: That the Secretary did not consider this problem.

MR. HYMAN: That is what I am saying. There is

1 no animosity. You can write your decision the same way  
2 and we will save the Court's time. The Court can try  
3 all the criminal cases it wants and it will be there  
4 Monday. We have the brief done.  
5

6 MR. LIKE: May I say something?

7 MR. HYMAN: I am not just -- there can be a  
8 million people, lawyers, authorities, private people,  
9 counties, municipalities, townships, trustees, the State  
10 of New York, and even the Federal Government, but the  
11 statement says that if there is no pipeline we will use  
12 tankers. If this Court wants to outlaw tankers, we will  
13 sky pipe it. We will do something with it. That is it.  
14 I am willing to accept that decision.

15 THE COURT: It is not only a question of pipe-  
16 lines, where they go, whether it is sufficient. I have  
17 not decided the case. I am hearing evidence as of now.

18 MR. HYMAN: I understand that.

19 THE COURT: I am entitled to hear all the  
20 testimony.

21 MR. HYMAN: Yes, you may do what you want.

22 MR. KAUFMAN: May we bring in the CEQ guidelines --

23 THE COURT: The --

24 MR. KAUFMAN: Council of Environmental Quality  
25 Guidelines.



THE COURT: Give it to me one piece at a time.

MR. BRUCE: On the federal statutory level, there is now and has been since 1972 -- although it was substantially changed during the hearings of last summer -- the Coastal Zone Management Act. It says a number of things about the relationship between land use planning and engineering facilities. One of the important things it says is that before a state can get a program approved -- can invoke these powers and before it can receive substantial monies that have been provided by Congress -- that before it can do that, the Secretary of Commerce shall find -- shall find adequate provisions are being made for the management facilities.

Now, I am not saying that that constitutes condemnation power. But I am saying it constitutes a very significant statement on the part of the Federal Congress as to the very issue that the Court is now concerned with, and I do not want the Court to lose sight of that.

MR. LIKE: The gentlemen are riding on my meter. May I say something? This is in response to both Mr. Bruce and Mr. Hyman -- it is legal argument. The Council of Environmental Quality Guidelines, Section 1500.8

Davies-direct

Subdivision 2, requires that the Secretary must consider the relationship of the proposed action to the land use plan, policy and controls to the affected area. This requires a discussion of how the proposed action may conform or conflict with the objectives and specific terms of the approved or proposed federal, state and local land use plans, policies and controls, if any, for the area affected.

There is a clear statement -- a clear mandate as to what the Secretary must consider. The evidence that is on display now or the testimony of this witness is designed to show that we do have a situation where this project will not be in conflict with the proposed land use policies that have been adopted by the Bi-County --

MR. HYMAN: If your Honor wants to adopt Mr. Like's characterization as to the guidelines, you can put that into your decision and we will accept it that way and we will go up. Of course, the Second Circuit has said that a guideline is a guideline, that you don't have to follow them, you can look at them, you can do what you want with them, but it is not the law. We will even accept that in your Honor's decision.

THE COURT: You seem to be anxious to file a



brief.

MR. HYMAN: We have it printed, Judge.

THE COURT: Why don't you hold onto it? You may want to make some modifications.

MR. KAUFMAN: I just wanted to point out one thing:

That is, with respect to Mr. Bruce's comment on Coastal Zone Management Act Amendment. Your Honor quite correctly pointed out in his opinion that the Coastal Zone Management Act won't be coming into effect for a couple of years.

THE COURT: Let us have the facts, gentlemen.

Is a pipeline considered industrial use by zoning and land use?

THE WITNESS: Yes.

MR. LIKE: Would you please resume the witness chair again?

THE COURT: Isn't there a pipeline that runs down a good part of the north part of the Island? There was some controversy a couple of years ago about a firm wanting to make a deep oil port on the North Shore and they were all set to pipe oil into the City? Where does that run?

THE WITNESS: Right here there are two small

1  
2 pipelines, one servicing a LIILCO generating plant in  
3 Northport. There is an off-loading platform here.

4 THE COURT: Mark that.

5 THE WITNESS: The facility is here.

6 There is an off-loading facility in the Sound  
7 and there is a pipeline going into that facility here.

8 There is also a facility approximately here at  
9 Northville, off-loading, and a pipeline to the storage  
10 tanks on the North Shore. There is an interior pipeline  
11 from Port Jefferson to Holtville, and there is a tank  
12 farm --

13 THE COURT: Mark it a little heavier, please.

14 THE WITNESS: I believe that is down in this  
15 region here, a pipeline going to Northville -- excuse  
16 me, to the Holtville storage tank in this area.

17 There is also some storage tanks up here in  
18 Secaucus. There is a small pipeline going along the  
19 right-of-way of the Long Island Expressway to a small  
20 tank farm in Plainview.

21 THE COURT: Mark that, please.

22 THE WITNESS: I believe -- I believe the right-  
23 of-way of the Expressway is along here and from this  
24 map I can't tell where Plainview is. It is around in  
25 this area here, Western Suffolk County.



(Indicating)

THE COURT: Wasn't there a proposal to run a pipeline from the easterly end of the Island --

THE WITNESS: There was a proposal a number of years ago to establish a desalinization plant on the North Shore. I am not sure of the exact location. I believe it was in the late 1960's.

THE COURT: There is no pipeline to the off-loading tanker, to the storage tanks in mid-Island?

THE WITNESS: No pipeline from the facility here to the facility there (indicating).

(continued next page)

1  
2 MR. LIKE: What was the outcome of the  
3 desalinization application?

4 THE WITNESS: It did involve a zoning change and  
5 I don't know -- I am not certain as to the history of  
6 that, but it was -- the idea was killed.

7 MR. LIKE: The proposal was disapproved by the  
8 Suffolk County Planning Commission?

9 THE WITNESS: I believe it was.

10 MR. LIKE: Will you please resume the chair?

11 (Witness resumes witness stand.)

12 Q I show you Plaintiff's Exhibit T230 and I ask  
13 you if there is any statement in that plan with respect to  
14 the bi-county master plan which is in evidence?

15 THE WITNESS: There is a statement in here  
16 stating that this plan along with two others have a  
17 remarkable degree of broad scale agreement with the  
18 state plan, but with some conflicting details --

19 Q Do the conflicting details have anything to do  
20 with the shoreline areas or anything to do with the master  
21 plan for coastal areas?

22 A As opposed to the state plan?

23 Q Yes.

24 A I am not -- I am not really sure of the  
25 details.



Davies-direct

Q Has a copy of the bi-county plan been included in the New York State plan, 230 for identification?

A Yes.

Q Do you interpret the language there as constituting a state endorsement -- an approval of the bi-county plan?

A Yes.

MR. LIKE: Offered into evidence.

THE COURT: Mark it.

THE CLERK: Plaintiff's Exhibit 230 for identification, marked in evidence.

(So marked.)

MR. LIKE: May we have a ruling that the witness is qualified as an expert? That was left hanging.

THE COURT: An expert on what?

MR. LIKE: On planning.

THE COURT: Yes.

Q Has the Nassau-Suffolk Regional Planning Board entered into any contracts with respect to coastal zone management planning?

A Yes.

Q With whom?

A At the present time, we have two contracts with the New York State Department of State.

Q When was the contract entered into?

1  
2 A Both contracts at the present time -- that we  
3 have at the present time had a starting date of April 1, 1976  
4 and will terminate March 31, 1977.

5 Q Do the contracts set up fiscal years to define  
6 the activities performed by the Nassau-Suffolk Planning Board  
7 with respect to coastal zone management?

8 A Yes.

9 Q Will you tell us what the years are that have  
10 been established as fiscal years or work years?

11 A Right now we are in Year 2 of the coastal  
12 zone management process and year 1 of the Outer Continental  
13 Shelf --

14 THE COURT: Is there no objection to this?  
15 I thought we were going to exclude anything subsequent  
16 to August.

17 MR. LIME: The contract was entered April 1st  
18 of 1976, which is before the final environmental  
19 statement issued in May of 1976.

20 THE COURT: If there is no objection--

21 MR. HYMAN: It shows federal participation.

22 THE COURT: You have no objection?

23 MR. HYMAN: Only so far.

24 THE COURT: All right.

25 Q Now, what was Year 1 under the coastal zone



1 management contract -- what was the period covered by Year 1?

2 A It would be the period ending April --  
3 March 31, 1976, beginning April 1, 1975.

4 Q Year 1 under the coastal zone management  
5 contract began April 1 of 1975 and ended March 31, 1976;  
6 is that correct?  
7

8 A I believe so.

9 Q Does Year 2 pick up at that point, April 1,  
10 1976 to March 31, 1977?

11 A Yes, sir.

12 Q Is there a third year which is contemplated as  
13 part of the work program?

14 A The State of New York recently asked us for  
15 submission for their third year grant application to the  
16 federal government. They believed that there would be a  
17 third year under the CZM program.

18 Q You also have a fiscal year breakdown for the  
19 OCS contract with the State of New York

20 A Yes, sir.

21 Q What was the effective date of that contract?

22 MR. HYMAN: I am not familiar with the OCS  
23 contract. The only thing that came was the coastal zone  
24 management. I do not think it has any relationship.  
25 There has been no explanation of what it is all about.

1  
2 MR. LIKE: I will ask him to explain.

3 THE COURT: Any objection?

4 MR. HYMAN: Yes.

5 THE COURT: When was the contract entered into?

6 THE WITNESS: The contract was effective as of  
7 April 1, 1976. It is part of the supplemental OCS  
8 funds received by the State of New York from the  
9 Office of Coastal Zone Management.

10 THE COURT: You may inquire.

11 Q When was the application submitted by Nassau  
12 and Suffolk Regional Planning Board to the State of New York  
13 for the funding of these studies?

14 A We submitted a proposal to the State of New  
15 York in October of 1975.

16 Q And that proposal was in effect adopted by the  
17 entry into the contract which you described?

18 A We had a proposal for a two-year program  
19 segment which included in the first year an OCS program that  
20 the State received funding for.

21 Q Does Plaintiff's Exhibit T216 for identification,  
22 which is entitled "Analysis of the Potential Oil Spill  
23 Impact on the Nassau-Suffolk Coastal Zone," represent one  
24 of the work products of your contract with the State of New  
25 York under the coastal zone management contract of April 1,



19767

MR. HYMAN: The Government objects.

THE COURT: Sustained.

MR. LIKE: May I inquire as to the ground of the ruling?

THE COURT: It is a document produced after the cut-off date of testimony.

MR. LIKE: That may be, but I believe that it is admissible on multiple grounds. This is extremely an important document and I would appreciate if your Honor would take it subject to a motion to strike, rather than deprive yourself of the information.

THE COURT: No, I don't want it.

MR. LIKE: It is particularly relevant to the tanker-pipeline issue. .

THE COURT: It wasn't available to the Secretary --

MR. LIKE: The data in that report was available to the Secretary before he rendered his decision to hold that lease sale 40 and before he filed the environmental statement in 1976.

THE COURT: You will have to show it independently.

MR. LIKE: I will ask him the data sources.

1  
2 It is admissible on further grounds. The coastal zone  
3 management act was as to what effect this project  
4 would have upon coastal zone management planning in the  
5 areas that are affected by sale 40. This is the work  
6 product of the processes which the Government and  
7 industry have been arguing throughout. Here is a  
8 municipality which is analyzing the problem, and I am  
9 not being permitted to offer it into evidence?

10 THE COURT: It wasn't available to the  
11 Secretary. How can you say that his analysis was  
12 wrong at the time if the document did not exist?

13 MR. LIKE: That is not the point I am making.  
14 That it was something available to the Secretary. The  
15 data was available to the Secretary. This represents  
16 an analysis of the data and I am not saying -- my  
17 argument isn't that the Secretary should have  
18 considered the December 1, 1976 contract. That is not  
19 the basis for the proffer. The basis for the proffer  
20 is first that it analyzes the evidence which is the  
21 foundation of your Honor's decision regarding the  
22 tanker-pipeline question.

23 Secondly, it is admissible as the work product  
24 of the processes of the coastal zone management  
25 planning which began before the Secretary issued his



1 final environmental statement, and which identifies  
2 the problems which the defendants have urged will be  
3 solved in the process of coastal management planning.  
4

5 THE COURT: Your second I do not think is  
6 sufficient.

7 Is every bit of that data in that contract data  
8 available as of the spring of 1976?

9 THE WITNESS: In the rear of that report that  
10 was produced, not under the CSM, but the OCS, the  
11 information contained in that report is referenced in  
12 the bibliography. The only information that was not  
13 available prior to the spring is some information that  
14 was obtained on an interview basis with officials of  
15 the New York State Department of Environmental  
16 Conservation, and some of that information went into  
17 resource inventory maps. That information was on the  
18 basis of interviews.

19 THE COURT: When were the interviews conducted?

20 THE WITNESS: In November.

21 MR. LIKE: The interviews concerned what  
22 subject?

23 THE WITNESS: The distribution of marine  
24 habitats and coastal fisheries.

25 MR. LIKE: An inconsequential portion of the

1  
2 document.

3 If I may show you the references at pages 145  
4 through 147, you will find with one exception -- one  
5 of them antedates the issuance of the final  
6 environmental statement for Sale 40 and it is those  
7 references that have been analyzed in this report.

8 MR. HYMAN: The most important thing is that  
9 the analysis that they now want to bring in was not  
10 before the Secretary. You can have a library with all  
11 kinds of facts and figures and thousands of years of  
12 research and get a special contract to formulate all  
13 kinds of positions, but the thinking of this  
14 organization was not available for anyone's use.

15 MR. LIKE: That is not the point. The analysis  
16 here is the same as the testimony given by the experts  
17 in which they analyzed -- I am not offering it in that  
18 the Secretary should have known of the report.  
19 Mr. Davies' testimony is the same as that given by the  
20 various experts offered by the Plaintiff, who looked at  
21 the data in the impact statement and reached certain  
22 conclusions.

23 THE COURT: Why don't you ask him, then?

24 MR. LIKE: I want to save time. I will take  
25 him through the report, then.



1  
2 THE COURT: No, ask him conclusory questions  
3 of the type you want answered based only upon  
4 information that was generally available in the  
5 literature as of the spring of 1976. What are his  
6 conclusions?

7 MR. LEE: All right.

8 Mr. Davies, the data resources which you relied  
9 upon in preparing Exhibit --

10 THE COURT: Forget about the exhibit. Ask him  
11 the kind of questions that I asked you, so we can  
12 bring it to a head.

13 Q What data did you gather in making your  
14 analysis --

15 THE COURT: No, based upon the data generally  
16 available as of the spring of 1976, people working in  
17 the planning field, did you analyze that data and  
18 what is your conclusion with respect to it, whatever  
19 you want a conclusion as to, A, B or C.

20 Q I will adopt his Honor's question and ask you  
21 what is your conclusion with respect to the impact of tanker  
22 traffic upon the New York coastal zone, and I am talking  
23 about tanker traffic generated by Sale 40?

24 MR. LAPITTE: I object to the testimony.  
25 This witness is here to testify as a planner. He

Davies-direct

100W

1362

265a

is employed by the Regional Planning Board and I see no  
basis for his ability to testify with respect to  
impacts of oil spills.

(continued next page)

BEST COPY AVAILABLE



1  
1/pat  
.appe  
'3PM

1  
2 THE COURT: No, I think this is an aspect  
3 of planning, particularly someone who has worked  
4 with the coastal zone management problems, and the  
5 outer continental shelf problems.

6 MR. HYMAN: I think before he can answer  
7 that question, I think there has to be another  
8 basis -- on the voir dire -- has he ever read the  
9 impact statement -- that the information that he  
10 relied upon is in the impact statement?

11 THE COURT: You may cross-examine. You can  
12 use this document and any other documents. Let  
13 us move ahead.

14 Under the Federal Rules, he can ask a general  
15 question and get a general answer and leave the  
16 rest of it.

17 Q Did you read the portion of the final environmental  
18 statement in Sale 40, concerning tankers?

19 A Yes.

20 Q Would you please answer the question that the  
21 Judge put to you with respect to the tanker traffic problem.

22 THE COURT: Go ahead.

23 A The information that was relied upon were several  
24 studies conducted by the Department of Ocean Engineering, the  
25 MIT Marine Research Center and the Stony Brook Oceanography

Center in which various probability contours of spills on Long Island Beaches were superimposed upon tanker traffic lanes on the South Shore of Long Island. We found that the -- that in both studies the summer probabilities were much higher for spills, if in fact those spills originated within the tanker traffic lanes.

The MIT study -- there were two --

MR. BRUCE: This is going beyond what your Honor contemplated.

THE COURT: I will allow him to explain.

MR. BRUCE: We are getting testimony well beyond his competence.

THE COURT: I will allow it.

A (continuing) The two studies conducted by HIT as referenced in the final statement for Sale 40 -- the first study referenced was based on information on currents, wind data, et cetera, and the use of a computer study which was superseded by the second study and referenced in the statement. It also states that it is not relevant to OCS Sale 40.

The information contained in the study by the Marine Research Center concentrated on the traffic lanes adjacent to the South Shore and also in the proposed sales for OCS Sale 40 and also for 42. The information contained in those reports, again was used in overlays on maps showing the



Location of the Nassau/Suffolk Coastal Zone --

MR. BRUCE: May I object before he goes further?  
We are entering into another area which I thought your Honor had already clarified. The testimony he is giving now pertains to studies of overlays of the Sale 42 area --

THE COURT: I do not want any 42 area discussions. Any testimony you give is to be without respect to what happened or will happen on 42, and what happened or what you think happened with respect to the sludge deposit last spring and summer. Any of those events or oil spills subsequently or anything like that. Is that clear? Just on the basis of the information generally available in the spring of 1976 and the analytical techniques available to planners in the spring of 1976, and your expertise as a planner how you answer the question which was put to you. That's all I want. Proceed.

THE WITNESS: The information contained in the Marine Science Research Center Report indicated that in the summertime --

MR. BRUCE: I must renew the objection. May I ask the witness one question on voir dire?

THE COURT: No.

1  
2 MR. BRUCE: This report is as to 42 --

3 THE COURT: Was it prepared before the spring --

4 THE WITNESS: It was prepared in the spring  
5 of 1975.

6 THE COURT: You may answer.

7 THE WITNESS: (continuing) This report shows  
8 probability contours for stranding of oil spills on  
9 the South Shore Region apex of the New York bite,  
10 which is the area where the tanker lane converge  
11 south of Long Island. The report showed a high  
12 probability of spills in the summer, 60 to 80 per-  
13 cent higher with respect to the apex of the bite,  
14 than in the winter time and it was the notion that  
15 spills, if they didn't strand within 10 days, in  
16 winter time, wouldn't strand at all. However, as  
17 you proceed the New York bite apex a higher  
18 probability or higher probabilities are realized  
19 as you approach the New York Harbor.

20 MR. LIKE: If I may, your Honor, we have  
21 prepared exhibits which graphically depict the  
22 tanker lanes in the New York bite area which were  
23 analyzed in the 1975 report and which were available  
24 to the Secretary --

25 THE COURT: If they were based on information



1  
2 prior to the spring of 1976, I will take it.

3 MR. LIKE: All right.

4 MR. HYMAN: He said it was in a report. I  
5 would like to have it identified.

6 THE COURT: Put them up on the wall.

7 MR. HYMAN: Could counsel identify the report  
8 that they came from and the date of the publication.

9 (Continued next page.)  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 MR. LIKE: The witness will, when he testifies  
2 tell you where the data comes from on the report.

3 THE COURT: All right.

4 MR. HYMAN: I'm talking about the map; when  
5 it was produced.

6 THE COURT: We'll find out in a moment if you  
7 just be patient.

8 MR. LIKE: Your Honor, I think it would proba-  
9 bly be easier if we use the existing so it's closer.  
10 I don't think you'll be able to see the details from  
11 here.

12 THE COURT: Turn it around on the courtroom  
13 blackboard.

14 MR. LIKE: For the record, I'm asking Plaintiff  
15 Exhibit T231 which is figure 11 map, contours of  
16 probability that are spill relieved in the offshore  
17 region during summer will impact Long Island  
18 (ten mile sea breeze).

19 THE CLERK: Plaintiff's Exhibit 231 for  
20 identification marked in evidence.

21 (so marked)

22 Plaintiff's Exhibit 232 for identification  
23 marked in evidence.

24 There was Exhibit 223 and T -- excuse me,  
25 233 for identification marked in evidence and



Plaintiff's Exhibit T234 marked in evidence.

Also marked)

MR. LIKE: Could Mr. Davies have permission to approach the exhibit?

THE COURT: Yes.

(witness leaves the stand, approaches the courtroom blackboard)

Q Drawing your attention, Mr. Davies, to Exhibit T231 which is Figure 11, Contours of Probability that are Spill Release in the Offshore Region during Summer will Impact etc., will you please point to the shipping lanes and identify them?

MR. HYMAN: Might I have a voir dire, please?

THE COURT: No.

MR. HYMAN: We will save a lot of time.

THE COURT: Proceed.

A This shipping lane designated here is the Ambrose Nantucket lane. This lane is the Hudson Canyon Ambrose lane. This is the Barraget Ambrose lane (phonetic).

Q Was the location available to the Secretary of the Interior before May of '67?

A I assume so.

Q Will you please identify the Probability Contour Lines that are shown on the exhibits?

3 1  
2 A Probability Contour Lines shown here range  
3 from .05 to .6.

4 MR. BRUCE: I object. The contour lines speak  
5 for themselves. The contour lines are clearly drawn  
6 in an area that lies east of Long Island towards  
7 the Georgias Bank area which is marked on the exhibit  
8 up here (indicating) proposed Sale 42 area; those  
9 contour lines clearly lie considerably northerly  
10 and east of the Baltimore Canyon area (phonetic) at  
11 issue in this case. The conclusions the witness has  
12 given are in a study to do with the Georgia Bank  
13 area or cumulative impact from the two.

14 THE COURT: I'm not sure I understand. Where  
15 is the oil spill taking place?

16 THE WITNESS: In this particular study, a  
17 1974 study conducted by the Department of Engineering,  
18 MIT, in which they simulated hypothetical oil spills  
19 at approximately 200 locations on the continental  
20 shelf, then analyzed where those hypothetical spills  
21 stranded to come up with the probability contours in  
22 terms of number of spills.

23 THE COURT: I don't understand.

24 Take the first one. You mean if the spill  
25 occurs along that line the probability is such and



Davies-direct-Like

such that it will end up on the south shore of Long Island?

THE WITNESS: Yes. This is the probability contour point 6, roughly the equivalent to a 60 percent chance that should a spill occur in summer there's a 60 percent chance it will end up on Nassau and Suffolk County shore.

THE COURT: On the first chart which is Plaintiff's what?

MR. LIKE: T231 in evidence.

THE COURT: 231 clearly is a spill that wouldn't occur from Sale 40.

MR. LIKE: We are talking about -- let me ask the witness some more questions.

Q Will you please, using a colored pencil, mark a hypothetical spill location in a shipping lane on any of the exhibits before you and then explain what the probability is of that spill reaching the shore.

We are talking about a spill in a tanker shipping lane.

THE COURT: I understand. What has that got to do with the problem of sale 40?

MR. LIKE: Because if tankers bringing oil from Sale 40, for example, are in a particular shipping lane which enters a probability contour, then we

5

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

can estimate --

THE COURT: None of those probability contours in the first document are on any shipping lane that any rational skipper would take to get from Sale 40.

MR. LIKE: Here is Figure 17, perhaps more apt --

THE COURT: Let's use one that makes sense.

Q I ask you to pick any one.

THE COURT: Pick one that bears on the case before me.

Q Use -- plot for us a hypothetical spill occurring in a tanker shipping lane transporting oil from the Sale 40 area to the New York harbor and indicate the probability sequences?

A Right there (indicating).

MR. LIKE: The witness has marked a red cross.

THE COURT: What document?

MR. LIKE: The T234 in evidence, located within what probability contour line?

A Between the 40 percent chance of occurrence and the 60 percent chance of occurrence.

Q If a spill occurred at that location, what is the probability that it would reach shore?

A Between 40 and 60 percent on Long Island.



6  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Did you find anything -- withdrawn.

Are there any other exhibits -- withdrawn.

The T234 in evidence refers to a spill occurring in the summertime; is that correct?

A That is correct.

Q Do you have an example of a spill occurring in the wintertime?

A Yes.

Q Discharged by a tanker using a tanker lane, a tanker shipping lane and transporting oil from the Sale 40 area?

A (indicating)

MR. LIKE: The witness is marking with a red X, Exhibit 233 in evidence.

Q Within what probability contour lines have you plotted the X?

A That lies between the 33 percent and 67 percent probability contours.

Q What shipping lane did you use?

That is approximately at the juncture of shipping lanes servicing New York harbor.

When you say "all three shipping lanes", you those name you gave earlier?

you referred earlier to the New York Bight.

Will you, using another colored pencil outline the area known as the New York Bight?

A (indicating)

THE COURT: Do it on one of the documents that has not been marked, using a blue pencil.

(witness complies)

A This particular map does not show the edge of the continental shelf by contour. The New York Bight is generally accepted to mean that area bounded by Cape May into Jersey, Montauk and out to the edge of the continental shelf after isomath line. Therefore, that line is some place out there. I'm not sure exactly where because it's not shown on that map.

MR. HYMAN: Might I be heard? I could stop it, the whole thing.

THE COURT: Give him a chance.

MR. HYMAN: It's in the statement. The map he took out of our statement and he put it up there and he's coming up with something new. I won't misrepresent to the Court that those two maps are right in our statement and he drew a couple of cockamamie lines on it for the shipping. There they are, Judge, the exact -- I followed the testimony. He's supporting our case that this kind of evidence



1  
2 is in Sale 40 statement and anybody who could read  
3 scientific English would know what the sequences  
4 are.

5 I don't know where it's getting us. I really  
6 mean it.

7 THE COURT: All right. Proceed.

8 MR. HYMAN: Did you get that out of the  
9 statement.

10 MR. LIKE: I object to this disruption of  
11 my cross-examination.

12 THE COURT: Resume your seats, please. Let's  
13 bring this to a close.

14 (cont'd on next page)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## DIRECT EXAMINATION

BY MR. LIKE (Cont'd):

(Witness resumes the stand)

Q You mention an MIT trajectory study. Is there also a drift card study by a scientist named Sailer, with Hardy and any others?

A Yes, sir.

Q When was that study done?

A In 1975 it was published.

Q What data did you obtain from that study and how did you use it in the exhibits which are in evidence?

A The various maps showing the contours of probability, those maps were utilized in preparing the overlay shown on the base maps on the board.

Q You testified earlier that in addition to preparing the overlay showing the shipping lanes and the probability contours, that you also prepared marine resources map showing various habitats with the coastal zone area; is that correct?

A Yes.

MR. HYMAN: Objection, he testified the marine resources divisions were subsequent to the statement. I heard Mr. Like make that representation to you before and the witness.

BEST COPY AVAILABLE



MR. LIKE: Your Honor, what I said earlier was that the witness used references, all of which anti-date the preparation of the final environmental statement with the exception of verbal communication as to location of certain particular species.

THE COURT: I won't permit anything based on --

MR. LIKE: We will try seclude those portions that were prepared afterwards and have the witness concentrate on the data which is available before the secretary.

THE COURT: All right.

BY MR. LIKE (Cont'd):

Q Have you prepared a number of maps to illustrate the marine resources of the Nassau Suffolk coastal zone?

A Yes.

MR. LIKE: I ask for the help of the court officer to post these maps.

THE COURT: Yes.

(Maps are placed on the courtroom blackboard)

MR. LIKE: Your Honor, this is T236, for identification, sir. It's a collection of five maps, the first of which is habitat distribution, map one; the second one is habitat distribution of map two; the third is hard clam distribution; the fourth is major

water fowl feeding and nesting areas. That is map 11.  
The fifth is outdoor recreation, map number 12.

THE COURT: Are all these maps based on  
information generally available before the spring of  
1976?

THE WITNESS: Generally available, I would say,  
yes.

THE COURT: Mark them in evidence. Let's  
proceed.

BY MR. LIKE (Cont'd):

Q Was the information you got from the State  
Department Environmental Conservation, generally available  
before May of 1976?

A Information that was received from personnel  
was available upon the asking.

THE COURT: I'll take these. I can look at them  
myself.

THE CLERK: Plaintiff's Exhibit T-236 marked  
for identification, now marked in evidence.

(So marked)

THE COURT: Let's proceed, anything further?

MR. LIKE: Your Honor, please, I appreciate the  
time problem, but I want to continue in an orderly  
manner because this witness has some data which I think



is of value to the Court.

282

THE COURT: I'm not hurrying you.

BY MR. LIKE:

Q Have you made some large blowups of the maps just entered into evidence, Mr. Davies?

A No.

Q Did you prepare any additional maps showing the offshore fisheries of the Nassau Suffolk coastal region?

A Yes.

Q Will you produce them, please?

A I don't know where they are at the time.

(Witness leaves the stand)

MR. HAFCKE: While he is looking for that, I would like to pose an objection to both this obviously ensuing line of examination and the last offer as well. We had 11 days of a hearing before with some of the best people in the United States to identify fishing areas, what have you.

Mr. Like had his witnesses, Nassau County had witnesses, the defense put on witnesses. All this type of evidence has come in through expert witnesses. We now have a geologist, who is a full time planner. There is not any mention in the witness' description that we were given by Mr. Like about this man's testimony that he would get into these areas again, not qualified to

1  
2 get into them. I think we are wasting time and it is  
3 not aiding anything.

4 THE COURT: With all due respect, these maps  
5 contain information which is generally known.

6 MR. LIKE: The reason these additional maps  
7 were prepared was precisely because of your Honor's  
8 decision, by focusing attention to the tanker pipeline  
9 issue, I felt it was important to see how that issue  
10 related to resource distribution.

11 THE COURT: What else does he have to say?  
12 We all know there is an area surrounding Long Island  
13 that has high productivity with respect to water fowl,  
14 shell fish, fish, all of these things.

15 MR. LIKE: We are trying to show your Honor the  
16 location of the tanker lanes where the accident,  
17 which could happen —

18 THE COURT: We have that now. What else?

19 MR. LIKE: I want to show whatever the fisheries  
20 specifically impacted because of their proximity to  
21 tanker lanes.

22 The witness was asked to make an inventory of  
23 all the fisheries information available to the secretary  
24 and all his references here that are plotted by the  
25 county cartographer, has to do with information available



before May of 1976 in the published literature.

What he has simply done --

THE COURT: Mark all those maps in evidence. I don't think they add very much, with due respect, to what we had over the summer but mark them.

MR. LIKE: They supplement Professor McQuess' map showing the offshore fisheries and the coastal zone so you now have a continuous reflection of the distribution of the fisheries from the shelf to the coastal zone.

THE COURT: One document, mark them.

THE CLERK: Plaintiff's Exhibit 237 marked in evidence.

(So marked)

BY MR. LIKE (Cont'd):

Q Mr. Davies, in your -- withdrawn.

In preparation for your testimony, did you gather any statistics with respect to the subject of tanker spills?

A Yes.

Q Will you tell us what information you obtained with respect to tanker spills that involve tankers transporting oil from the sale 40?

THE COURT: Available in the spring of 1976?

MR. LIKE: Yes, sir.

7

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: All right.

MR. BRUCE: Your Honor, might we have a continuing objection to this line of questioning?

THE COURT: Fine.

MR. HYMAN: I have a problem with the question posed. The question presupposes that the sale took place and oil was producing and brought in by tankers. He said what the question related to from the oil of the sale 40 area which I don't think —

THE COURT: All right, you raised the question. Do you understand the question?

THE WITNESS: Could I have it rephrased?

BY MR. LIKE (Cont'd):

Q I'll rephrase it. Tell us what tanker data you obtained and how you used it in coming to conclusions with respect to the amount of oil that would be spilled from existing tanker traffic and the amount of oil that might be spilled as a result of additional tanker traffic, transporting oil from the sale 40 area to the New York area?

A The information was obtained from the final environmental impact statement of sale 40 as well as some information obtained from the vessel service branch of the Coast Guard.

Q What information did you obtain from the Coast



Guard?

A I should say levels of tanker traffic in the port of New York.

Q What information were you given with respect to the level of tanker traffic coming into the New York port area?

A In 1975, there were approximately 2300 tankers arriving at the port of New York.

MR. LA PITTE: I didn't hear that.

THE WITNESS: Approximately 2300 tankers arriving in the port of New York.

Q In what year was that, 1975?

A 1975.

Q Did you find any information in the final environmental statement stating the number of tanker arrivals coming into New York during any particular year?

A No, I did not.

Q Did you also make an estimate of the amount of tankers that would come to New York from the Baltimore Canyon sale 40 area in the event no pipelines were constructed?

(Continued next page)

SS/ed  
3PM-3

Davies-direct-Like

287

MR. HYMAN: Objection, this is clearly outside of his competence to testify. He's going to make an estimate of the amount of oil that would come ashore from the sale of, Sale 40.

MR. LIKE: This witness will testify to the date at a base. On cross-examination he may be questioned as to --

THE COURT: I don't think he's sufficiently qualified.

Q What information did you find in the final environmental statement with respect to the amount of oil anticipated to be produced in the Baltimore Canyon Sale 40 area?

A There was a figure of approximately 340,000 barrels per day maximum production.

Q What information did you find in that statement with respect to the types or sizes of tankers that would be used to transport that oil if no pipeline were built?

A In terms of dead weight tonnage, something like the standard 26,000 dead weight --

Q Did you make a calculation of how many tanker trips would be necessary if tankers of the sizes described in the Sale 40 final environmental statement were used to transport oil of the Sale 40 area to the New York harbor



area?

MR. HYMAN: Objection, I want to know specifically where in the statement it says that raw oil is going to be transferred to New York harbor.

MR. LIKE: That's cross-examination.

MR. HYMAN: He's asking him about figures in the statement. The next think you get is oil, unrefined oil in New York City. What's the relevance?

MR. LIKE: The New York harbor area, your Honor, is the port of entry for oil that is going to New Jersey refineries. We're not talking about oil coming to New York City. We're talking about oil transported to the refineries in the New Jersey-New York port area. Mr. Hyman knows that.

THE COURT: Are you assuming for the sake of this computation that all the oil coming --

MR. LIKE: No, sir, the witness, if he's given a chance to proceed, and I don't understand the cross-fire on almost every question when this witness is trying to present information of value to the Court. The witness will testify as to the volumes of traffic going to the Philadelphia area, the Philadelphia port area and the New York port area.

THE COURT: How is he qualified?

1 MR. LIKE: It's in the statement.

2  
3 MR. HYMAN: If it's in the statement, why do  
4 we need it from him? That's the Government point,  
5 your Honor. It's in the statement.

6 THE COURT: I take it this is just a calcula-  
7 tion?

8 MR. LIKE: Analysis of information in the state-  
9 ment which is germane to the issue your Honor raised  
10 on the tanker pipeline issue, and puts flesh and con-  
11 crete necessary to that issue instead of the generic  
12 superficial discussion --

13 THE COURT: This the kind of a planning person  
14 would do?

15 THE WITNESS: My background is resource planning.  
16 It's not necessarily land uses, economics.

17 THE COURT: Is this kind of compilation that a  
18 planner would try to do to determine the impact of  
19 certain activities?

20 THE WITNESS: Yes.

21 THE COURT: I'll take it.

22 Q Tell us what information you found bearing upon  
23 destination of the crude oil extracted from the Sale 40 area?

24 A From the information in the statement, one  
25 tanker of the standard size, 26,000 dead weight tonnage is



1  
2 required for maximum daily production.

3 Q One tanker per day?

4 A Per day to the New York port-New Jersey  
5 refinery area.

6 Q Did you find any information there with respect  
7 to the destination to the Philadelphia port area of oil  
8 extracted from the Baltimore Canyon area?

9 A The remainder of the maximum daily production  
10 not shipped to New York refineries would be shipped to Phila-  
11 delphia refineries.

12 Q How many tankers did you estimate would be  
13 needed to transport the Sale 40 crude oil to the Philadelphia  
14 refinery complex?

15 A I believe it's on the order of one a day, also.

16 MR. LAFITTE: I'm sorry.

17 THE WITNESS: One a day, also.

18 Q Would the tankers transporting oil to the New  
19 York area from the Sale 40 drilling sites use the shipping  
20 lanes which are shown in the maps which are in evidence?

21 A I believe they would.

22 Q Did you make any investigation to determine  
23 the source of additional tanker traffic that might arrive in  
24 the New York port area?

25 A Yes.

5

1

2

Q What did you do and what did you find out?

3

A We looked at the estimated production associ-

4

ated with Georgia's bank.

5

MR. HYMAN: Objection, Sala 42.

6

THE COURT: Sustained.

7

Q MR. LIKE: I want to grab this issue by the

8

horns because this is an appropriate time to do so.

9

I want the opportunity, if I may, to make an offer of

10

proof through his testimony.

11

THE COURT: He's entitled to make an offer of

12

proof.

13

MR. HYMAN: I understand what he's said, your

14

Honor. A year and a half ago he brought this issue

15

up. He's had 15 -- this is the 16th time it's come up.

16

If it's not in the record, it's never going to be in

17

the record. I remember motions made. I remember

18

motions made during trial. I remember motions on

19

papers. It's going to sink in subconsciously. We all

20

have brains. He's like a guy preaching the bible.

21

He's going to win it. It's got to stop.

22

THE COURT: Make it brief.

23

MR. LIKE: The guidelines state, section

24

1500.8 --

25

THE COURT: Mr. --



1  
2 MR. LIKE: Please, you allow Mr. Hyman to rant  
3 on. I can't make an argument citing an authority.

4 THE COURT: Go ahead.

5 MR. LIKE: The interrelationships at cumulative  
6 environmental impacts of the proposed legislation  
7 and other Federal products shall be presented in the  
8 statement. The amount of detail provided in such  
9 descriptions should be commensurate with the extent  
10 and expected impact of the action.

11 In the final environmental, Sale 40, appears  
12 the following statement, the secretary knew about this  
13 when he issued the statement. He said, "A second  
14 study by Stewart and Devaney, 1964 focused primarily  
15 on spills emanating from Nantucket shalfs, thus out  
16 of our area of interest." The secretary of the statement  
17 of which he had data, trajectory data, had informa-  
18 tion from Baler, Mr. Baler, that became available in  
19 1965, his statement this was out of his area of  
20 interest was precisely the deficiency which the CEQ  
21 guidelines are designed to remedy. I've cited every  
22 case, including NRDC versus Calloway decided in this  
23 Circuit, which indicate the cumulative impacts must  
24 have been addressed.

25 Now when your Honor rule in the summer of this

7 1  
2 year that the issue was out of bounds, unfortunately  
3 it had not been precisely focused and sharply presented  
4 to your Honor. Your Honor's decision on tanker pipe-  
5 line now provides the kind of contention which makes  
6 it possible to take a handle on this information. The  
7 secretary knew at the time that the Sale 40 statement  
8 was issued that there was no other proposal pending  
9 for the Georgia's bank. He knew what the recoverable  
10 resources estimates were for gas and oil in that area.  
11 The tracks selections had taken place in January of  
12 1976 so he knew how much acreage was out there. He  
13 also had discussed with the oil industry and it says --

14 THE COURT: You may not go ahead with 42.

15 MR. LIKE: If the issue is not addressed now,  
16 we're foreclosing objections.

17 That's what the cases talk about. I ask your Honor  
18 before you rule out any testimony to reread the cases  
19 we've cited in our brief.

20 THE COURT: I've read the cases this summer.  
21 I'm not going to take 42.

22 MR. LIKE: The cases should be looked at with  
23 the specific issues raised. I see no harm in this  
24 issue making a calculation of the amount of production,  
25 that's all in the statement, making an estimate of the

BEST COPY AVAILABLE



7a

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

number of tanker troops. That's my offer of proof.  
I don't intend to get any further into the cumulative  
impact of those statements.

(Continued on next page.)

JB:jk

4pm R1

Davies-direct

1392<sub>294</sub>

1  
2  
3 THE COURT: I am not going to do it. First of  
4 all, those forty-two tankers could be going up north  
5 rather than to New York City.

6 MR. LIKE: Let me make an assumption, then.

7 THE COURT: Secondly, we know that they -- the  
8 total maximum production expected on forty-two, if  
9 forty-two goes ahead, is what? About a quarter of  
10 forty? Is that it, roughly?

11 MR. HYMAN: Yes, your Honor.

12 MR. LIKE: Your Honor --

13 THE COURT: So we have two tankers needed for  
14 forty. We at most have a half-tanker for forty-two.  
15 I am not going to get involved in it.

16 MR. LIKE: Your Honor, the testimony is already  
17 in the record that the tankers carry oil from the  
18 Georgia bank going to the New Jersey refinery. That  
19 is well-recognized because a pipeline is out of the  
20 question.

21 THE COURT: I am not going to take those  
22 reports.

23 MR. LIKE: I am asking that -- I want to get  
24 a number from him. We know you may have a half a  
25 tanker. Let the witness testify to what the number is  
and that will be the end of the issue. I am not asking

BEST COPY AVAILABLE



1  
2 you to get into the wholesale inquiry into forty-two.  
3 I am sharply focusing on the tanker issue because all  
4 of these tankers are converging all in one area and  
5 coming into the New York area.

6 THE COURT: We don't know. Forty-two may go up  
7 to Boston.

8 MR. LIKE: No. Sale 42 -- it is not the --

9 THE COURT: I am not reading 42.

10 MR. KAUFMAN: Your Honor, there are no  
11 refineries up there.

12 THE COURT: There may be.

13 MR. LIKE: Your Honor, with all due respect,  
14 if the real world conditions were known to the  
15 Secretary at the time he decided the --

16 THE COURT: I am not going to extend this  
17 hearing beyond 40. I am sorry. I've got to bring it  
18 to a close.

19 MR. LIKE: This is in the nature of an offer  
20 of proof, your Honor, if I may, so the record clearly  
21 indicates the basis for my argument on cumulative --

22 THE COURT: Be brief.

23 MR. PICCIANO: May I be heard for one sentence,  
24 your Honor? The point I believe that should be made  
25 with respect to these guidelines, when he discusses

1  
2 cumulative impacts, it is true we are not going to  
3 examine Sale 42 right now. Obviously, it wasn't a  
4 concrete issue at the time 40 was decided. However,  
5 the guidelines in the case all agree that the  
6 alternative, the reasonable alternative in terms of  
7 the eventual recovery from 42 must be considered. And  
8 that's precisely the issue that we are making.

9 THE COURT: I am not going to take that. I am  
10 sorry.

11 MR. LIKE: All right.

12 MR. KAUFMAN: May we have an exception?

13 THE COURT: Certainly, you may. That's been  
14 the guidelines at this trial right from the start.  
15 I am not getting into 42. I have enough trouble with  
16 40.

17 Proceed.

18 Q What is the estimated daily production for  
19 sale 42?

20 MR. HYMAN: Objection, your Honor.

21 MR. LIKE: All right. All of these questions  
22 shall be deemed objected to. It is all part of an  
23 offer of proof.

24 THE COURT: I don't want them in the record.

25 MR. LIKE: All right. Then my offer of proof



1  
2 is -- may I confer with the witness for a moment, your  
3 Honor?

4 THE COURT: Give me a written document  
5 indicating --

6 MR. LIKE: Well, your Honor wants to get a  
7 decision out in this quickly. And if we can put it in  
8 now, then I don't have to go back to the office and  
9 write documents when it can be handled in a matter of  
10 a minute.

11 (Whereupon, Mr. Like conferred privately with  
12 the witness.)

13 MR. LIKE: The Plaintiff's offer to prove  
14 through the testimony of this witness that had he  
15 been permitted to testify that if the tankers are used  
16 to transport oil from the Georgia Bank area to  
17 refineries in the New Jersey area, the daily production  
18 is estimated at 181,000 barrels, and this would  
19 require one tanker per day.

20 Did you hear that?

21 THE COURT: I certainly did. I sustain the  
22 objection.

23 MR. LIKE: That concludes my direct  
24 examination. Thank you, your Honor.

25 THE COURT: All right, anything further?

1  
2 proposed pipeline, not a fixed pipeline. And your  
3 Honor has not allowed any evidence of any that went  
4 in beyond February -- or whatever it was -- May of  
5 1976. And how he is being asked to testify about a  
6 proposed pipeline which isn't even -- well, there has  
7 been a lot of --

8 MR. KAUFMAN: I object to it.

9 THE COURT: There has been a lot of discussion  
10 in it including federal applications, state and local  
11 applications. I will permit it.

12 All right, give him a green-colored pencil.

13 Q Would you first identify the Wontauk --

14 THE COURT: Take a green pencil.

15 THE WITNESS: Well, I don't have a -- if I can  
16 find my place here on the map.

17 There is a pipeline approximately in this area.  
18 Okay. I can't tell from this map. Going across  
19 south Nassau County out to the ocean, Suffolk County,  
20 the southwest sewer district proposed location is  
21 approximately here.

22 Q Do you know the size of either of the existing  
23 pipelines or proposed pipelines that you are referring to?

24 A Offhand, on the order -- I think it's 30 mgd  
25 for the southwest sewer district, although I am not certain



13S7

Davies-cross/Jensen

303a

1  
2 that that is the correct figure. It may be 90 mgd. I am not  
3 certain of that figure.  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2 Q So we can understand this: This would be a  
3 pipeline large enough to accomodate for Wantagh 90 million  
4 gallons of treated sewer affluent per day for the Southwest  
5 Sewer District or a pipeline large enough to accomodate  
6 30,000 --

7 A I am not certain of those figures.

8 Q But that is what MCD refers to.

9 A A million gallons per day.

10 Q Now, the Wantagh pipelines, does that traverse  
11 any of the title wetlands area, to your knowledge?

12 A In terms of the State of New York's definition?

13 Q Yes.

14 A Yes.

15 Q Does it also traverse portions of South Oyster  
16 Bay?

17 A I believe so.

18 Q And would it have been necessary to dredge  
19 portions of South Oyster Bay in order to install that pipeline?

20 A Yes.

21 Q Does it traverse any beaches?

22 A It would have to.

23 Q Which beach does it traverse?

24 A Jones Beach Barrier.

25 Q Again, that beach would have to be dredged or



1 dug up in order to install this pipeline?

2 A Correct.

3 Q Now, the proposed South Sewer District Pipeline,  
4 what areas does that traverse?

5 A Portions of the western Great South Bay,  
6 Gardiner's Island, and again the Jones Beach Barrier.

7 Q This area would include the title wetlands under  
8 the New York State Law?

9 A Yes.

10 Q Was an application for title wetlands in the  
11 permit for that proposal?

12 A Yes.

13 Q Wasn't that application granted by the State of  
14 New York?

15 A I have no -- there was a hearing on it. I am  
16 not -- I don't know what the status of it is lately. I am  
17 not sure. It may have been. It's possible. I am not sure.

18 Q If this pipeline is ever constructed, will it  
19 necessarily involve the dredging of significant portions of  
20 the Great South Bay?

21 A Yes.

22 Q Will it not also involve dredging or digging  
23 across one of the barrier beaches off the coast of Long  
24 Island?  
25

1  
2 A Yes.

3 Q Do you know, if there are any bird sanctuaries  
4 or wildlife sanctuaries in the area that is to be traversed  
5 by the Southwest Sewer District outfall?

6 A There is a significant colony in the region  
7 where the outfall is proposed.

8 Q Approximately how far do these two outfalls  
9 extend into the -- the actual outfall or proposed extend into  
10 the ocean.

11 A As far as the Southwest Sewer District, I believe  
12 it's proposed for 2.5 miles. I am not sure as to the length  
13 of the other one.

14 Q All right. Do you know approximately how much  
15 land in terms of the rift of the pipeline corridor was required  
16 for the Wantagh pipeline?

17 A No, I don't.

18 Q For the proposed Southwest Sewer District  
19 pipeline?

20 A In terms of number of feet, no, I don't have  
21 the estimate. No.

22 Q And what is the current status of the land that  
23 was dug up to accommodate the Wantagh pipeline? Has it been  
24 filled in?

25 A I don't know.



Q Do you know whether or not there are recreational areas over the top of that pipeline?

A The whole Jones Beach Barrier is basically a recreational area.

Q So far as you know, there is no portion of that beach which has been locked off or obstructed in any way because of the pipelines traversing the beach.

A I haven't been there. I haven't viewed it. I have to answer I don't know.

Q Are you familiar with the zoning variance or rezoning that was necessary to put in either of these proposed -- either the actual pipeline or the proposed line?

A In terms of the actual project?

Q Yes.

A No. That's a detail that would be left up to the sewer agencies and the respective counties.

Q Now, I believe you testified that the Suffolk County Planning Commission has the responsibility for reviewing plans for variances or rezonings in areas anywhere within 500 feet of the Atlantic Ocean for one of the bays; is that correct?

A That's correct.

Q So in the exercise of that authority, has the Suffolk County Planning Commission had occasion to consider

1 the Southwest Sewer District Pipeline proposal?

2 A The authority of the Suffolk County Planning  
3 Commission has to do with requests for changing zones, variances,  
4 special permits, et cetera on behalf of the municipalities  
5 within Suffolk County. I am not sure as to the status of the  
6 -- of whether or not an agency of county government would  
7 also have to go through that procedure.  
8

9 Q But I am asking, did the county planning board  
10 with which you are familiar have occasion to consider this  
11 proposed pipeline?

12 A Having not examined the minutes of the Planning  
13 Commission Meeting, I would have to answer I don't know.

14 Q Well, have any of the planning efforts in which  
15 you have been involved considered this proposed pipeline?

16 A Planning efforts that I have been involved with  
17 involved the 208 waste water product that is being conducted  
18 for Nassau and Suffolk Counties. The discussion concerning  
19 the impact of the Southwest Sewer District and the construc-  
20 tion of the outfall are day-to-day matters of discussion  
21 with that particular study.

22 Q Has the Suffolk County Planning Board or the  
23 Nassau-Suffolk Regional Planning Board ever indicated approval  
24 or disapproval of the proposed Southwest Sewer District Ocean  
25 Outfall?



1  
2 A I don't have the minutes of the particular  
3 meeting to go through and tell you the answer to that. That is  
4 an official action on the part of the Suffolk County Planning  
5 Commission. You will have to go through the minutes to deter-  
6 mine what has been officially done.

7 Q In any of the plans with which you are familiar  
8 is there any indication that this project is to be approved  
9 or disapproved by either of those two bodies?

10 A What plans are you referring to? I am not --

11 Q Well, any of the planning that has been under-  
12 taken by either of these agencies concerning possible land  
13 uses, either current land-use or future land-use in that  
14 area. Do any of those plans account for in any way this pro-  
15 posed ocean outfall.

16 A There was a document that was prepared as part  
17 of the comprehensive development plan. And I believe without  
18 -- again, I have to go back to that document which I don't  
19 have with me. There is a provision in there for utilities.  
20 Sewer systems are part of that document. And I believe there  
21 is a recommendation for sewerage of Southwest Suffolk County.  
22 The specific details of that sewerage, such as location of  
23 outfall and all that information was not contained in that  
24 document. Therefore, if that in essence endorses -- I think  
25 that the concept is endorsed. Whether or not the particular

7  
1  
2 project is endorsed, again, that would be a specific policy  
3 action undertaken by either of the Suffolk Planning Commission  
4 or the Nassau-Suffolk Regional Board as to the -- I can't  
5 state as to whether or not they have been quoted officially  
6 and endorsed by those planning bodies.

7 Q Well, in your professional opinion as a planner,  
8 is the Southwest Sewer District on Ocean Fallout a necessary  
9 project for the health, safety and well-being of the public  
10 in that part of Long Island.

11 MR. PICCIAO: Objection.

12 MR. LIKE: Objection, your Honor.

13 THE COURT: I will allow it.

14 THE WITNESS: As far as the scientific analyses  
15 show, I think they are in general agreement that the  
16 water quality within South Nassau County, Southwest  
17 Suffolk County is the greatest -- it officially war-  
18 rants the construction of some sort of massive water  
19 treatment facility. The question centers around that  
20 it should be done and how the waste water should be  
21 disposed of. That is the question, not the concept.

22 Q Well -- but I asked you if you approved of that  
23 as --

24 MR. LIKE: Objection, your Honor. I think the  
25 witness has answered as accurately and as fully as .



can be.

MR. JENSEN: It was not responsive.

THE COURT: I thought it was.

Q Is this proposed ocean outfall likely to cause any environmental damage in your professional opinion in this area?

A Yes.

Q Would you say that it's going to have a significant environmental impact

MR. LIKE: Objection.

Q (continuing) on the area in question?

THE COURT: I don't want to get into th's.

MR. JENSEN: All right.

Q Now, I would like to call your attention again to the maps.

MR. JENSEN: I see they have been taken down. Could we have them put up?

THE COURT: Yes. They are here.

MR. JENSEN: It may not be necessary to put them up. I only have a couple of questions.

THE CLERK: Do you want these small ones?

MR. JENSEN: Yes, the smaller ones.

Q I call your attention now to the four maps which you posted on the board during the course of your direct

2 The report was superseded by Stewart and Devanie. 1974,  
3 which is shown on two of these pages. Stewart and Devanie  
4 revise their original report which is referenced in these  
5 figures. These figures were deemed not appropriate to  
6 reflect the winds and currents south of Long Island. They  
7 were in the second report. They were deemed as more or less  
8 replaced by the results in Stewart and Devanie 1974. In  
9 fact, in looking at the -- in the text in here, it states  
10 that the Stewart and Devanie report that we have utilized  
11 on these charts was basically designed to look at Nantucket  
12 oil spills. And that is not the case. That report was  
13 designed to give us better information on oil spills south  
14 of Long Island. And it was published in 1974. And the  
15 -- and it was not designed specifically to look at any other  
16 areas except south of Long Island -- southeast of Long  
17 Island.

18 Q Well, perhaps we can compare the two. Let's  
19 begin with Plaintiff's Exhibit T232 in evidence. What does  
20 that chart purport to be a chart of?

21 A This particular chart was taken from  
22 information contained in the marine scientific research  
23 center report which utilized drift cards to determine  
24 surface drips of oil. This particular figure shows the  
25 percentage probability contours of the tracking of oil



1 strands within ten days on Long Island in winter. Now, that  
2 particular figure is also not contained in this particular  
3 report.  
4

5 Q Would you compare -- there is a figure, is  
6 there not, contained in page 70 that indicates the contours  
7 of the probability of a spill reaching Long Island during  
8 wintertime, and there are contour lines indicating what those  
9 probabilities are; is that correct?  
10

11 A That figure is -- in essence, replaced the  
12 results contained in this figure. However, they were super-  
13 seded by the second report.  
14

15 Q What is the difference between the two? One  
16 indicates that there is a 60 per cent probability line some-  
17 where near shore? Because of the scale of the map it  
18 discusses the -- it determines that exactly. And on your map  
19 we have somewhat closer to shore a 33 per cent probability  
20 line for the same area.  
21

22 A Okay. The differences are as follows:  
23 You point out the results of a computer  
24 simulation. This particular figure was drawn upon the  
25 results gathered in a surface card study.

HR. KADPMAN: Could we have the witness  
identify which is which in terms of this particular  
one and that particular one, and whether it's his  
exhibit or the --

L  
IS/pat  
Klappe  
5/LPH

1408

Davies - Cross/Jensen

317

MR. JENSEN: So the record is clear, we are comparing now Exhibit 10A, which appears at page 70.2 of Plaintiff's Exhibit 233 in Evidence.

THE WITNESS: 10A?

MR. JENSEN: Yes.

THE WITNESS: I wouldn't utilize Figure 10A.

Q Why not?

A Because it has official -- been superseded --

Q I understand that. If anything, Figure 10A shows a higher probability that the oil is going to impact on the shore, than your Figure 2337. Simply compare the contour lines.

A Okay. It shows a higher probability of stranding on Long Island offshore in a different season than this particular map.

Q Don't they both refer to winter?

A That refers to the summer -- excuse me, that refers to the winter.

Q This statement is by not having that data that is more recent that an oil spill off the shores of Long Island is going to reach the shores of Long Island; is that your testimony?

A It is in the sense it doesn't have the most up-to-date data.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Isn't it also true that it takes 75 of volume  
two of the 40 EIS, there is the specific statement and I quote:

"Tankers, if they are to be used bringing oil  
into Raritan Bay, would provide a greater chance of spills  
reaching southern Long Island."

A Greater chance than what?

Q Spills reaching southern Long Island.

It says that, doesn't it?

A It says:

"Tankers, if they have to be used bringing oil  
into Raritan Bay, would provide a greater chance of spills  
reaching southern Long Island," yes.

Q If we were to take a reasonably informed public  
decision maker, wouldn't that statement put him on notice that  
if tankers are employed to transport oil instead of pipelines,  
there is greater probability of an oil spill impacting on the  
coast of southern Long Island?

A I assume so.

Q Now, you testified at length concerning estimates  
that you did with the possible increase of tanker traffic that  
might be associated with Sale 40; is that correct?

A Yes, sir.

Q And was it your testimony that the information  
which you used to arrive at this estimate was obtained from the

1  
2 Sale 40 EIS?

3 A Correct.

4 Q And isn't it true that calculations which you  
5 performed, are the kind of manual calculations that any  
6 reasonably well-informed person could perform?

7 A The calculations?

8 Q Didn't require any expertise, if you got so  
9 many million barrels of oil and if you have a tanker capacity  
10 of so and so --

11 A We made the calculations because it wasn't  
12 contained in the statement.

13 Q But the information is there?

14 A It's the analysis of the information contained  
15 in the statement.

16 Q Doesn't the Sale 40 EIS also specifically  
17 state that there exist a possibility that tankers may have to  
18 be employed to transport all of the oil that may be obtained  
19 from the Sale 40 lease area?

20 A Reference is made in the document that pipelines  
21 would be used, I believe.

22 Q But doesn't the document also say there is a  
23 possibility that every last drop of this oil may have to be  
24 brought ashore in tankers because we will not be able to  
25 avail ourselves of pipelines?



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A I can't pinpoint it for you.

Q Do you recall reading a chart that set out the actual amount of oil in volume that was projected to be spilled, if every drop of oil was transported ashore by tanker?

A There was a probability density distribution as to sources of spills and total volume of oil expected to be spilled as a result of the expected daily production. Also it contained in the impact statement a statement stating that no methodology existed for calculating the extent to which net traffic by tankers were to be increased or decreased as a result of the sale. The methodology is deficient. Yet results on probability densities on expected volume of oil to be spilled are contained in the impact statement as a result of using that methodology, which again is deemed deficient by the people using it.

Q Doesn't that methodology employ a worse case basis -- the worst possible anticipated spills, if all the oil is tanked ashore?

A As far as I know that particular methodology is based on worldwide tanker volume, transport and total tanker casualties. It's just a statistical type of thing.

Q Isn't it true that the worldwide tanker spill rate is substantially higher than the tanker spill rate for

1  
2 waters off American shores?

3 A The point is the extent to which the tankers  
4 will increase or decrease is not clear from the impact state-  
5 ment.

6 Q And yet this was something that you can calculate  
7 by taking the numbers and adding them up.

8 A Utilizing the information contained in the  
9 impact statement, based on the assumptions in the impact state-  
10 ment. It's a simple calculation.

11 Q Now, in making your estimates concerning the  
12 possible increase in tanker traffic, did you take into account  
13 in any way the possibility that this -- the domestic source  
14 of oil from Sale 40 would replace on a barrel-to-barrel basis  
15 oil that was tankered from foreign countries into the New  
16 York Area?

17 A The impact statement alleges that that will  
18 happen, but to the extent of the information contained in that  
19 statement, it's impossible to determine that net effect.

20 Q So your answer is "no," to my question -- my  
21 previous question -- you did not attempt to take that into  
22 account?

23 A There is not enough information to take it into  
24 account in the impact statement.

25 Q Now, the maps which you testified about contain



1  
2 some additional information containing tanker traffic lanes;  
3 is that correct?

4 A Excuse me, can you repeat that?

5 Q As compared to the maps we have discussed that  
6 appear in 40 EIS, your maps contain an additional overlay indi-  
7 cating tanker traffic lanes?

8 A Correct.

9 Q Was this information -- that is information con-  
10 cerning the location of tanker traffic lanes -- available  
11 anywhere in the Sale 40 EIS?

12 A Yes.

13 Q Wasn't it set out?

14 A The information on traffic lanes was contained  
15 in Volume Four, I believe of one of the foldouts.

16 Q I show you now a map from Volume Four, visual  
17 number one, and do you find such information on this map?

18 (Document shown to witness.)

19 A Yes.

20 Q And do these tanker traffic lanes accurately  
21 portray what you know or believe the tanker traffic lanes to  
22 be?

23 A I believe so, yes.

24 Q And this would include tanker traffic lanes  
25 proceeding in an east-west direction along the south coast of

1  
2 Long Island as well as tankers lanes coming up from a southerly  
3 direction?

4 A Yes.

5 MR. JENSEN: Just one moment, please.

6 (Pause.)

7 Q Now, you testified concerning the power of the  
8 County Planning Commission to review certain changes in the  
9 zoning ordinances or applications for variances -- rezoning,  
10 et cetera; is that correct?

11 A Yes.

12 Q I take it that you agree with me that there are  
13 many instances in which the locality has in effect the final  
14 say as to whether or not to grant a variance or application,  
15 even in a coastal area that might allow industrial use.

16 A There are certain conditions where the locality  
17 may act contrary to the opinion of the Suffolk County Planning  
18 Commission. However, in order to do so they have to have a  
19 majority plus one vote and also they must also adopt a resolu-  
20 tion stating the reasons why they disagree with the County  
21 Planning Commission. That's where they can override.

22 Q In your experience, has that ever happened?

23 A I believe it has happened.

24 Q I would like to refer you to Volume 20 of Sale 40  
25 of the RIS, to a discussion to the footnote as to the



transportation of oil from Sale 40.

(Document shown to witness.)

A Yes.

Q Does that discussion explicitly make the assumption that all of the oil might be transported ashore in tankers, because among other reasons -- and I quote -- "there are factors which could hinder or prohibit the use of pipelines." And it goes on to identify three such factors including and I quote, again "receptivity of State and local jurisdictions along the mid-Atlantic coast to the approval of pipeline land fills that would be needed."

A That's what it says, correct.

Q I ask you a similar question to the one I asked earlier:

Isn't it true that a reasonably well-informed public decision maker, reading this statement, would be on notice that there exist the possibility that all of this oil may be tankered ashore, because the State and localities might refuse to accept any pipelines along their shores?

A You cannot determine how total tankering of that oil will impact tanker traffic into New York from the information contained in the impact statement.

Q Well now, I call your attention to 32 of the same volume. Isn't it true on that page there appears a chart

1  
2 setting forth the hypothetical tanker spillage over the 20-year  
3 life of the projected life of the oil field, on the assumption  
4 that all of the oil would be tankered ashore.

5 A This estimate was based on inadequate methodology.  
6

7 Q You say it's inadequate?

8 A They say so in here.

9 Q Do they also say that this was -- did they also  
10 say this was the worst case approach, that is, they were  
11 defining at least for purposes of this study the worst possi-  
12 ble set of circumstances that might occur?

13 A I believe they based it on worldwide spill  
14 statistics, worldwide total volume carried, and they made those  
15 estimates and then they stated they don't expect those esti-  
16 mates to be realized as a result of the sale.

17 Now, they may make a worst case estimate, but  
18 then they state the estimates are no good.

19 (Continued next page.)  
20  
21  
22  
23  
24  
25



HS:Jk  
5pm R2

1  
2 Q Isn't it true that the reason that they got  
3 their own estimate is because they know and they say so at  
4 page 32, the likelihood of spills from tankers within United  
5 States waters, because of Coast Guard regulations and other  
6 such factors, is going to be less so that if anything the  
7 worldwide spill statistics analysis is more severe than what  
8 might actually occur as far as oil being tankered into the  
9 Port of New York or any other port in the United States?

10 A I assume it is a worst case analysis.

11 Q Don't they identify the reason they doubt  
12 their methodology, because this is worse than what they  
13 anticipate if they had a better methodology -- or worse than  
14 what they would find if they had a better methodology?

15 A The only thing I can say to that, they are  
16 assuming that less oil will be transported by foreign vessels  
17 -- American vessels, that maybe there is justification for  
18 that.

19 Q Is that a reasonable assumption or do you know?

20 A I assume it is reasonable.

21 Q Are you familiar with the provisions of the  
22 Jones Act and how that affects the transportation of oil to  
23 ports in the United States?

24 A What is the name of the Act other than the Jones Act?

25 Q It is known as the Jones Act colloquially.

2 1  
2 A No, I am not.

3 Q Are you familiar with any requirement imposed  
4 by the United States on the kind of tankers that may be used  
5 to bring oil into our shores?

6 A Not in detail, no.

7 MR. JENSEN: I have no further questions.

8 THE COURT: Anything else?

9 MR. LAFITTE: I have just a couple, your Honor.

10 CROSS-EXAMINATION

11 BY MR. LAFITTE:

12 Q Mr. Davies, as I understand it, the State of  
13 New York is embracing the coastal zone management act in  
14 pursuing its regulatory and land control coastal zone  
15 management?

16 A That is correct.

17 Q Can you tell me the status of the State's  
18 effort to develop a state plan under the Act, please?

19 A The State of New York is about to complete  
20 their second year of planning under the program that will  
21 end in March -- March 31, 1977. They have prepared a draft  
22 application -- I am not sure whether it has been sent to  
23 Washington or not. I have seen a copy of it. They are  
24 proposing that during the third year of the program, that the  
25 State will have completed a coastal zone management plan for



the State. The final preparation date for that plan, I believe, is -- I had it on some paper -- December of 1979, I believe. I will have to check that figure with some information that I have with me.

Q For the completion of its draft of the plan?

A Adoption by the Government.

Q I see.

A That's for the State of New York.

As far as Nassau and Suffolk Counties are concerned, we are on an accelerated time schedule. They hope to go to the segmentation process and we believe that that will probably be accomplished approximately a year ahead of the State.

Q Are you familiar with the funding which has benefited the State of New York under the Coastal Zone Management Act?

A Somewhat familiar, yes.

Q Could you specify that for us?

A I believe the year 1 grant was something like \$50,000, part of which was a match -- a matching contribution.

The second year program total I don't have. I do have the amount that the Regional Planning Board received, however.

Q Could you just give me a pretty good idea of

the second year?

A Probably on the order of \$1.2 million, or something like that.

Q Do you know whether as of this time the study plan of the State has a gas Outer Continental Shelf development plan or gas development plan?

A Part of the work that we conducted this year under this -- as mentioned before -- OCS contract as part of the coastal zone management was work done by the State. That was conducted as a supplement to the year 1 grant to the State, specifically covering OCS activities, and the work that we have just completed is part of a State coastal zone management program.

Q I do want to clarify one thing:

You spoke of a segmented Nassau-Suffolk County plan -- segmented from the State plan?

A Yes.

Q Does that mean that the Nassau-Suffolk County plan would be an approved plan under the federal scheme, which may occur prior to the approval of the State plan?

A The Nassau-Suffolk Region has been singled out along with another regional area near the Great Lakes under the segmentation process, as far as the State is concerned, and we are expected to complete our coastal zone management



5 1 prior to the completion of the State program.

2  
3 Q Do you expect to complete the regional plan?

4 A The formal draft plan is expected by the end  
5 of '77.

6 Q The end of?

7 A That is where the local people will have a  
8 chance to comment on the plan. If we are on schedule, some-  
9 times schedules slide, the formal approval by the State --  
10 I can't give you an estimate as to when the State of New  
11 York will approve our plan. That's up to the Legislature.

12 Then, of course, it has to be reviewed by all  
13 the federal agencies under the Office of Coastal Zone  
14 Management. How long that will take, I cannot give an  
15 estimate. When I say "completion," I mean completion of the  
16 draft plan for local review and not through the formal  
17 process of adoption.

18 Q The draft plan completion could be done this  
19 year, I believe you testified -- by the end of '77?

20 A We hope to get a working draft document by the  
21 end of the year.

22 Q I suppose it is possible that it could be  
23 approved all the way through the federal agency level in  
24 1978?

25 A I would tend to doubt it, because it would

Davies-cross/Lafitte

6 1  
2 have to first go through the Government's approval and when  
3 approved by the Government it would have to go through  
4 federal approval and that process involves a minimum of nine  
5 months or longer. I am not sure when that date will come.

6 Q I asked you a moment ago about the addressing  
7 of the State plan of the proposed Outer Continental Shelf  
8 oil and gas development. I believe you answered that your  
9 efforts in connection with the regional plan as to the Outer  
10 Continental Shelf --

11 A Can you repeat the question?

12 Q I am trying to clarify something. I thought  
13 you said earlier in an answer to a question that I propounded,  
14 addressing in the State plan the matter of oil and gas  
15 development on the Continental Shelf?

16 A The State of New York has received under  
17 year 2 -- year 1 of OCS, I should say, a total of  
18 approximately \$370,000 to conduct OCS-related coastal zone  
19 studies. The State of New York has, in turn, subcontracted  
20 to various agencies within the State, the New York State  
21 Environmental Department, the Long Island Recreational  
22 Commission, the Suffolk Regional Planning Board, and some  
23 others. We are in the process of conducting this work this  
24 year and as part of the third year grant, the State has  
25 included additional items of OCS activity in the program, and



7 1 we expect to be involved in those activities next year.

2  
3 Q Does your regional segmented plan address OCS  
4 oil and gas development?

5 A The studies that we are conducting now will be  
6 part of the plan.

7 Q That was what I understood.

8 A Yes.

9 Q I believe you stated in the direction that your  
10 review of Coast Guard information told you that in the  
11 year 1975 there was some 2,300 tankers that entered New York  
12 Harbor?

13 A Approximately.

14 Q You also stated that information was not in  
15 the Sale 40 final statement?

16 A I obtained that from the Coast Guard. There  
17 was no estimate of the total tankers entering New York  
18 Harbor in the impact statement for any year that I could find.

19 Q Let me call your attention to some information,  
20 Mr. Davies. I show you Vol. 1 of the impact statement,  
21 addressing your attention to a discussion commencing on  
22 392, and I ask you if you had occasion to read the discussion  
23 that followed?

24 (Document shown to witness.)

25 A No, I haven't read that. That refers to total

Davies-cross/Lafitte

tonnage, right?

Q That part that you just read there is a table which appears on page 392, which just shows by year crude petroleum tonnage in the Port of New York and New Jersey, isn't that right, for the years 1950, 1955, 1960, 1965, 1970 and 1973?

A It does show total tonnage, but not the number of vessels run.

Q Right.

Were you aware of that information when you took the stand today, the fact that it was in the impact statement?

A This particular table?

Q Yes.

A I didn't read that particular table.

Q I suppose I am interested in knowing whether you reviewed the statement for the purpose of whether there was a discussion of tanker traffic, crude freightage into the Port of New York?

A I specifically looked at Vol. 2, which contained the oil spillage analysis conducted by the Department of Interior and their discussion on oil spills.

Q All right, sir, as I understood your testimony concerning the maps that Mr. Jensen exhibited to you, the probability of the occurrence of oil spill impact in the Long



Davies-cross/Lafitte

Island area, deals with spills in shipping lanes that are shown on that exhibit, right?

A Both studies deal with the area south of Long Island and that area is also the area of the shipping lanes, so you can infer from those diagrams whether or not spills emanating from the shipping lanes would hit Long Island.

Q You answered, I think Mr. Like, when he asked you whether the shipment of oil from the Sale 40 lease area would occur in those shipping lanes and I believe you testified it would occur in those shipping lanes?

A If entering the Port of New York, New Jersey it would pass through the region where all three lanes converge and that's an area also covered by some of those diagrams.

Q Do you know that those shipping lanes would be used for the transportation of oil from the Sale 40 area into the Port of New York?

A No, I don't know that for a fact.

Q It is true, also, isn't it, that oil produced from the Sale 40 lease area could go to other places such as the Delaware Bay area for refining and the Philadelphia refineries?

A Again, as far as the destination of the oil is concerned, I suppose it could, yes.

10 1

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q It could go to the Gulf Coast area where other refineries are located?

A If that's what the people decide to do with it.

Q The transportation would not involve the shipping lanes shown in those maps?

A If it is tankered to the port of New York or New Jersey refineries, it would not use those shipping lanes.

MR. LAFITTE: That is all.

THE COURT: Any redirect?

MR. LIKE: May I confer with the witness for a moment?

THE COURT: Yes.

(continued next page)



1..

1427

MR. JENSEN: Your Honor, at this time perhaps I could hand up this (indicating). We were able to locate this during the recess. It's a Xerox copy which I've already shown counsel, of Section 17-F of Title 15, I believe it incorporates part of the Natural Gas Act.

In the section marked Subsection H, there's the reference--

THE COURT: Have the Clerk mark it so we know what it is. This is under Gas.

MR. JENSEN: This statute apparently refers to a general power of condemnation for gas pipe lines.

MR. HYMAN: We don't want it as part of our exhibits.

THE COURT: Mark it as a Court exhibit.

THE CLERK: Document marked as Court Exhibit T-1.

(So marked)

MR. KAUFMAN: Does your Honor want to take the CEQ regulations to follow up--

THE COURT: If you want to offer them, you say, yes.

MR. KAUFMAN: We'll have it in on Monday.

REDIRECT EXAMINATION

BY MR. LIKE:

1  
2 Q Is it correct the final environmental state-  
3 ment for Sale 40 does not contain any trajectory study  
4 analyzing tanker spills in the shipping lanes converging  
5 in the New York Harbor area?

6 A I believe the trajectory studies concentrated  
7 on the area of the proposed sale.

8 Q Is it also correct that the final environ-  
9 mental statement for Sale 40 contains no-- cites no specific  
10 breakdown of the risks posed to Nassau-Suffolk coastal zone  
11 resources from tanker spills--

12 MR. HEYMAN: He's leading him. I don't think  
13 that's correct. He's a mature individual up there,  
14 a geologist. He's giving him the answer to the  
15 question.

16 THE COURT: No, you may answer.

17 A The oil spill trajectory studies contained in  
18 the impact statement concentrate on spills originating at  
19 the site of the proposed sale. They do not treat spills  
20 originating in the tanker lanes south of Long Island.

21 Q Finally, Mr. Davies, going back to the question  
22 of local powers over land use zoning, can you tell us how  
23 many villages there are in Suffolk County that are located  
24 on the shoreline?

25 A I would say-- I'm not sure of the exact number.



There are approximately 90 villages in the two-county area. Most of them involve shorefront property. I'm not sure of the exact figure. I believe every village, with the exception of one in Suffolk County, has shorefront property and most of Nassau County have shorefront property.

Q Do you know whether every village has a zoning ordinance?

A I believe the entire Nassau-Suffolk region is covered by zoning.

Q Do you know whether each of these-- Withdrawn. How many towns are there in Suffolk County which have shorefront property?

A In Suffolk County?

Q Yes.

A I believe every township in Suffolk County; there's ten.

Q Do you know whether-- How about Nassau County?

A In Nassau, they all have shorefront.

Q Each of the towns has zoning ordinances?

A That's correct.

Q Do you know whether each of the towns has local laws other than zoning ordinances which pertain to matters having to do with dredging water costs activity, wetlands protection and the like?

Davies-redirect

A For the most, towns have dredging filled permit procedures they follow. Some towns have wetlands ordinances. As to the extent to which every town has either one of these, that would require going back to the original sources, but some towns definitely do have them.

MR. LIKE: No further questions.

MR. KAUFMAN: I have a few.

RECROSS EXAMINATION

BY MR. KAUFMAN:

Q You testified, Mr. Davies, in response to cross-examination a few minutes ago, that oil might go from Sale No. 40 area by tanker into New Jersey; isn't that correct, and the south shore of New Jersey?

A That's correct.

Q That would take it into the Philadelphia refineries?

A That's correct.

Q Did the spill trajectory studies in the impact statement in any way show any pattern of spill possibilities from tanker lanes off New Jersey?

A Not that I recall.

Q You also said the oil might go down to the Gulf. Did I understand that question correctly, that you said--



1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A I did not say that, but the oil can go, according to the attorney, wherever they want it to go.

Q Do you agree it might go to the Gulf?

A I have no basis which to agree or disagree. I don't know where it's going to go, really, in that sense.

MR. KAUFMAN: No questions.

THE COURT: Let me ask about this coastal zone management plan, because I'm puzzled by it.

As a technician, you're working on the Nassau-Suffolk aspects of it?

THE WITNESS: That's correct.

THE COURT: When you get finished with your technical work what will this be, a map, such as this, except on the coastal area?

THE WITNESS: One aspect of coastal zone management plan is land use. The land use will be reflected on the map such as that. The land use portion of the plan will be modified to reflect coastal zone considerations; therefore that particular map will be modified.

THE COURT: Is it just the band around the edge?

THE WITNESS: It takes up, I would say, roughly two-thirds of the areas of the two counties, the

coastal zone as we have defined it.

THE COURT: It goes inland?

THE WITNESS: Yes, inland as far as if there's any fresh water wetland or contiguous salt water wetland to an elevation of ten feet, or 1,000 feet inland, whichever is greater. It will cover every drainage way, stream, et cetera, entering into the coastal zone. That's the primary zone.

Other aspects of the plan will relate to fisheries management, channel dredging, waste water disposal, esthetics, transportation and that sort of thing.

THE COURT: When you get all finished with your map what happens to it?

THE WITNESS: At that stage it will be a draft plan, which will be subject to public review, public hearings, public meetings, et cetera.

After there's a chance to revise the plan in response to public review, there will be an attempt made to have it ratified, approved by the two-county board of supervisors in Nassau and Suffolk County.

THE COURT: What if they don't approve it? What happens?

THE WITNESS: If they don't approve it, I'm



RECROSS EXAMINATION

BY MR. JENSEN:

Q On redirect examination Mr. Like asked you if there was any discussion in the Sale 40 impact statement of possible oil spills from an area that would be within the tanker traffic lanes; is that correct?

A Yes, if there were any spill trajectory studies within the tanker lands, I believe that is the question.

Q Your answer to that is no?

A I believe so.

Q Will you take a moment and look at the description of the Stewart & DeVaney study that you said you are not familiar with, that appears on pages 59 through 62, and particularly the figure on page 61, where there are identified estimated drill sites, EDS. Do you see those?

A Yes.

Q Doesn't that very chart show that the study relates to estimated drill sites that are well within the tanker lanes that you identified on your map?

A Estimated drill site No. 5, if I can find the coordinates of it, you can tell me the coordinates of estimated drill site 5, we can determine that.

Q Perhaps--

Davies-recross/Jensen

A Here it is (indicating). We're talking about 40 degrees north, 73°10'.

MR. KAUFMAN: Volume what?

THE WITNESS: Volume 2.

EDS 5 is located here, with EDS 40 degrees north--

Q This map may not be precise enough.

A 40 degrees north, 73 degrees, 10 minutes. That would be approximately here.

Q Is that not well within the shipping lanes that you referred to on your map?

A It is, yes.

Q What about the EDS 4 I suppose would be the next nearest to any shipping lane.

A Whatever the coordinates are. You can determine that if we could find them. There is 5, but I don't see 4 here.

Q By examining the map we could see, can't we, that it lies approximately 41 degrees, assuming--

A Approximately 41 degrees.

Q That would place it where?

A Up here (indicating).

Q Would that be within shipping lanes or near the shipping lanes that you referred to in your testimony?



1  
2 A It wouldn't be in the shipping lanes, no. It  
3 would be north, approximately half a degree

4 Q Isn't it true, at page 67, the impact state-  
5 ment refers to another study done by the same individual,  
6 DeVaney & Stewart, that deals, that applies the MIT model  
7 to oil spills that are released north of 40 degrees?

8 A From what is stated here, I don't know what  
9 the source is. I don't know whether they are referring  
10 to our initial study or not. I would have to see the full  
11 reference. It does state they apply the model to spills  
12 released on 40 degrees. I don't know what study that is.

13 Q In fact, there is discussion in the 40 EIS  
14 of applying the trajectory mark that would fall within  
15 tanker routes we have been discussing.

16 A From what we just looked at, there was at  
17 least one case. Our studies look at hundreds of cases.

18 MR. JENSEN: No further questions.

19 THE COURT: Your opinion, then, as I under-  
20 stand it, is based upon the data that was available  
21 in the spring, that the impact statement was quite  
22 unsatisfactory in projecting oil spills, assuming  
23 oil was going to be tankered from Site 407

24 THE WITNESS: The information that was avail-  
25 able at that time was prepared as a result of contract

1  
2 work from our agency's information that more or less  
3 looks at the region south of Long Island in the  
4 tanker lines and the adjacent areas in depth.

5 The information in those studies, in my  
6 estimation, is in a sense — portrays the probabilities  
7 in a better light because it's based on more in-  
8 depth study of the local situation, the local area.

9 THE COURT: As a planner, is it your opinion  
10 that what was in the statement was unsatisfactory,  
11 given the information then available?

12 THE WITNESS: The reference to, for example,  
13 the Marine Sciences Research Center report  
14 documenting the drift card analysis that was  
15 conducted indicated that in general, I believe one  
16 page devoted to it in the impact statement, it  
17 failed to discuss the most serious results that were  
18 contained in that particular report, specifically,  
19 the region at the apex of the bight where any ship  
20 must come into to converge, into the harbor area,  
21 there was an extreme danger, and the numbers on  
22 this map show it, there are certain areas where  
23 the probability approaches 1, or a hundred percent;  
24 that if there is a discharge it will end up on  
25 Long Island.



1  
2 I must also add these maps show probability  
3 contours that are drawn only with respect to spills  
4 stranding on Long Island. That does not mean the  
5 spills will not strand on adjacent New Jersey shore-  
6 lines.

7 The data was analyzed with respect to whether  
8 there were spills on Long Island, and the problem  
9 posed to New Jersey by spills occurring in the apex  
10 of the bight is not apparent from these particular  
11 maps. We will have to go back to analyze the  
12 information.

13 THE COURT: You haven't answered my question,  
14 although the information is interesting.

15 As an expert planner, trained in this field,  
16 advising an executive who has to make decisions  
17 such as the Secretary of the Interior had to make  
18 with respect to the impact of drilling or possible  
19 impact of drilling and tankering and transportation  
20 from 40, Site 40, in your opinion as such an expert,  
21 based upon information then available, was the  
22 impact statement sufficiently informative to permit  
23 the expert to make the kinds of rational decisions  
24 that were required from an environmental point of view?

25 MR. BREWSTER: Before he answers, it's your

Davies-recross/Jensen

348

1  
2 question but might I interpose this in the nature  
3 of an objection, the question presumes the only  
4 material that was before the Secretary in this  
5 connection was, in fact, Volume II of the impact  
6 statement. Let's put that aside.

7 It ignores the fact there was also before the  
8 Secretary at the time a very extensive document  
9 which is in the record of this proceeding, Program-  
10 matic Environmental Impact Statement. You recall  
11 that three-volume work, but you recall it.

12 Before he answers that question, I would like  
13 to put the voir dire to him whether this witness  
14 has looked at the Programmatic Impact Statement to  
15 determine its quality of analysis of this tanker oil  
16 spillage problem. I would just like to ask him on  
17 voir dire.

18 VOIR DIRE EXAMINATION

19 BY MR. BREWSTER:

20 Q Have you?

21 MR. KAUFMAN: Excuse me. On that comment,  
22 I don't see anything about the Programmatic Statement  
23 in this letter dated July 19th, 1976, from the  
24 Department of the Interior saying what were the docu-  
25 ments that were in front of the Secretary. It says



1439

the PDOD was there, says there was a memorandum from the Assistant Secretary. It says there are various decision memoranda, and there is the final Environmental Impact Statement.

It does not say the Programmatic was there.

THE COURT: I'll allow the question and take the answer anyway.

A I read the draft impact statement at the time it came out. That was, I believe, roughly two years ago or so, and I didn't go back to look at that any more.

Q Did you read it vis-a-vis this issue of tankerage of oil?

A I went through the entire document.

Q You remember what it says as to that?

A I don't recall right now.

MR. BREWSTER: I submit he's not qualified to answer the question your Honor put to him.

THE COURT: Based on your reading of the final impact statement, can you answer it?

MR. HYMAN: Your Honor, may I ask one question on voir dire?

VOIR DIRE EXAMINATION

BY MR. HYMAN:

Q You testified you did not read the three-

1  
2 volumes of the EIS for Sale 40?

3 A EIS for Sale 40 I read basically Volume II.

4 Q You didn't read Volume I or Volume III?

5 A Not every word.

6 MR. HYMAN: I don't think he can qualify to  
7 answer your question.

8 MR. LIKE: I disagree. The witness testified  
9 he focused especially on the problems of tankers  
10 and tanker spills. He's indicated by his testimony  
11 he's fully aware of the tanker situation.

12 THE COURT: Have you read the documents with  
13 respect to the tanker problems?

14 THE WITNESS: My reading was specific to the  
15 areas concerning the spill trajectories analyses  
16 that were conducted, and on the various aspects of  
17 where the oil would go and how. From that point of  
18 view--

19 THE COURT: Just limit yourself to that then.  
20 Is that a satisfactory analysis from the point of  
21 view of the decision-making required by the Secretary  
22 of the Interior from an environmental point of view?

23 THE WITNESS: From my opinion not enough at-  
24 tention was focused on the apex of the North Bight  
25 for the following reasons: It appears from the



1 studies that we have conducted that if anything is  
2 spilled within the apex of the bight, chances are  
3 almost certain it will strand on shore. This is  
4 the impact -- this is the location where shipping  
5 coming into New York, Port of New York, must con-  
6 verge.  
7

8 If tankers are used for OCS sail forth and  
9 they are used to tanker the oil to the Port of New  
10 York, New Jersey refineries, then they, too, will  
11 have to converge up in that region known as the apex  
12 of the bight. This is the region also that is  
13 subject to environmental disturbances other than  
14 those related to oil, serious environmental dis-  
15 turbances that were brought out as a result of  
16 happenings this past summer and--

17 THE COURT: I want you to answer it without  
18 respect to any event that occurred after the spring  
19 of 1976.

20 THE WITNESS: Disregarding the spring and  
21 summer of '76, on the basis of available knowledge  
22 that's being collected in the MASA's program, they  
23 just designated the entire apex--

24 THE COURT: Don't tell me what they did after  
25 the spring of 1976.

1  
2 THE WITNESS: This is before. 1442

3 THE COURT: I see.

4 THE WITNESS: This project was authorized by  
5 the Federal Government to specifically look at one  
6 of the areas that are considered to be the most de-  
7 graded in the country. This is why they've gotten  
8 X millions of dollars to conduct this multi-year  
9 study at Stony Brook.

10 This whole problem of the seriousness of  
11 the area in terms of the types of degradation it's  
12 undergoing, the impact of anything connected with  
13 the sale, how that would impact it is something that  
14 I think is lacking.

15 THE COURT: Are you saying you can't ade-  
16 quately treat it in the documents prepared for sale  
17 40, or are you saying you don't know?

18 THE WITNESS: I would say more attention  
19 should have been paid to the processes of circulation  
20 in the apex of the bight.

21 Circulation patterns indicate things collect  
22 there, they don't disperse. That problem should be  
23 investigated a little more fully than in that  
24 document.

25 THE COURT: Anything further of this witness?



MR. BREWSTER: Yes.

RECROSS EXAMINATION

BY MR. BREWSTER:

Q You testified you did not read Volume I of the Environmental Impact Statement?

A That's correct.

Q Did you realize that Volume I's purpose was to describe the entire environment and that there is a section from page 62 to page 616 that describes the environment?

A Describing the environment.

Q Are you aware of that section?

A I'm aware of the sections that are used in impact statements to describe environment.

Q Did you read that section here?

A No, I did not read it in its entirety.

Q Did you read the description of the New York Bight in that section?

A No.

Q The opinion you offered is based upon a reading of a volume that didn't contain the essential description of the environment that you criticized as being inadequate in this impact statement; is that right?

A If it describes the environment alone, does

1  
2 it analyze the impacts that are occurring on that environ-  
3 ment?

4 Q Did you read the description of physical  
5 oceanography in that area, Volume I of that statement,  
6 such things as temperature, circulation?

7 A That is a description.

8 MR. BREWSTER: I submit--

9 Well, the record speaks for itself.

10 THE COURT: Anything further?

11 Thank you very much, sir.

12 (Witness excused)

13 THE COURT: We'll start Monday at 11:30  
14 because I have a number of criminal cases. I plan  
15 to go through them.

16 MR. LAFITTE: Eleven-thirty, you said?

17 THE COURT: Yes.

18  
19 (Time noted: 5:30 p.m.)  
20  
21  
22  
23  
24  
25



1445

THE COURT: Call your first witness, please.

Good afternoon.

MR. KAUFMAN: Mr. Corman.

ROBERT P. CORMAN, called as a witness,  
having been first duly sworn by the Clerk of the  
Court, testified as follows:

THE CLERK: State your full name.

THE WITNESS: Robert P. Corman.

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Corman, where do you live?

A In New Jersey.

Q What is your profession?

A I am an attorney.

Q Are you a member of the New Jersey Bar?

A Yes.

Q For how long?

A Since 1972.

Q By whom are you employed?

A I am employed by the Department of the Public  
Advocate in New Jersey.

Q What is your function in the Public Advocate's  
Office?

A The New Jersey Legislature created the

1 Department and created therein the Division of Public Interest  
2 advocacy which is designed to bring public interest litigation  
3 whenever the public advocate himself in his discretion  
4 considers it appropriate. I am in that Division and that is  
5 my function to carry out that public interest litigation.  
6

7 Q Are you a Deputy Public Advocate?

8 A Yes, sir.

9 Q In your capacity as a Deputy Public Advocate,  
10 are you the author of an amicus curiae brief to the Court of  
11 Appeals on October of 1976?

12 A Yes, sir.

13 Q Were you also the author of a brief submitted  
14 this past week as amicus curiae in this case?

15 A Correct.

16 Q In your capacity as Deputy Public Advocate, is  
17 it one of your responsibilities to be familiar with legislation  
18 passed by the State of New Jersey Legislature, dealing with  
19 offshore oil and other offshore oil developments?

20 A Yes, sir.

21 Q Has the action taken by you in submitting these  
22 briefs been approved by the Public Advocate?

23 A Yes.

24 Q During the year 1976 -- excuse me.

25 Who owns the submerged land under the Atlantic --



1  
2 MR. HYMAN: Objection. That is a very  
3 complicated legal issue. There has been no foundation  
4 laid that this gentleman knows about or has read  
5 43 United States Code 1313, which is the submerged  
6 lands act, and to come out and ask him a question as to  
7 who owns it is a question that scholars will be  
8 debating for the next 500 years. There are a lot of  
9 ifs, ands and buts to the ownership of the land. To  
10 ask this witness, without testing his background, is  
11 improper.

12 He says he knows about state law. It has to be  
13 conceded that New Jersey got that land from the United  
14 States of America and there are reservations and  
15 power rights and I do not think this is the kind of  
16 question that you can ask a lawyer. That is what  
17 lawyers are; they are advocates, they take positions.  
18 His position is not necessarily the law.

19 THE COURT: Try to qualify him. He knows more  
20 about New Jersey law ownership, I suppose, than any of  
21 us.

22 Are you admitted to the Bar of New Jersey?

23 THE WITNESS: Yes.

24 THE COURT: Try to qualify him.

25 Anybody else here admitted to the New Jersey Bar

1  
2 who feels he knows more about these matters?

3 MR. HYMAN: It is not a question of New Jersey  
4 law; it is a question of federal law. It is a question  
5 of conveyance by the federal government. They just  
6 assumed ownership --

7 THE COURT: You do not claim that the federal  
8 government owns the three-mile strip --

9 MR. HYMAN: I would like to bring to the  
10 Court's attention 43 United States Code 1313, which is  
11 the Act in question, Subdivision (d), in which  
12 Congress said:

13 "That nothing in this Act shall affect the use,  
14 development, improvement or control by or under the  
15 constitutional authority of the United States of such  
16 lands and waters for the purpose of navigation, flood  
17 control or the production of power," and it goes on  
18 and later they talk about the "production of power."

19 That's specifically a reservation of some  
20 type --

21 THE COURT: What is your contention, the  
22 federal government has the power to run oil pipes, or  
23 not?

24 MR. HYMAN: That is not contended in the final  
25 environmental statement. This business of rights is



1 something that has emerged from this litigation, like  
2 the old days when they thought of spontaneous  
3 combustion or giving birth without any act. It makes  
4 no difference. It is our contention that if New  
5 Jersey says, "No pipelines," that is fine. There is  
6 no problem with that. We will pipeline some place  
7 else or tanker it.  
8

9 THE COURT: If New Jersey says, "No pipelines,"  
10 are you conceding that you will run no pipelines?

11 MR. HYMAN: I am not the administrator. They  
12 might run pipelines to Delaware or Pennsylvania. If  
13 the law is that they can say that, that's the law --

14 THE COURT: What is the law? I would like to  
15 pin you down.

16 MR. HYMAN: My opinion on the law on that point?

17 THE COURT: You are representing the defendant  
18 here, Kleppe, are you not?

19 MR. HYMAN: Yes.

20 THE COURT: What is the defendant's position  
21 with respect to whether he has the power to organize  
22 or permit the running of pipelines, when the State  
23 says no pipelines?

24 MR. HYMAN: We haven't made any inquiries to the  
25 Department of Justice or the Department of Interior

1 concerning that issue. It is not an issue that the  
2 Government says is in this case. That is the decision  
3 that will have to be made in the future concerning the  
4 use of lines. I do not think that the Government has  
5 to get involved in more litigation concerning the  
6 title of ownership.  
7

8 THE COURT: I can tell you if under these  
9 circumstances I am going to assume that the State,  
10 either acting as a state or through its municipalities,  
11 has the power to prevent oil pipelines from being run  
12 under the three-mile limit and, of course, the beaches  
13 and into each one of the states involved.

14 MR. HYMAN: In view of the language contained  
15 in the statute, referring to the constitutional  
16 authority of the United States, the granting of the  
17 three-mile waterway to the state has a reservation  
18 that the United States of America will control such  
19 lands for the production of power.

20 THE COURT: I take it, in view of the normal  
21 meaning of those words, that it means tidal power or  
22 actual water power or pooling of power production units  
23 through the use of pumped water, and things like that.  
24 I do not assume that it means the pumping of energy  
25 through oil pipelines. Where there was a specific



1  
2 right of condemnation for gas pipelines, it was  
3 specifically stated as you pointed out to me properly.

4 MR. HYMAN: Going on in that vein, I would like  
5 to mark -- the Government is not trying that issue.  
6 We are just trying the sufficiency of the Act,  
7 10 United States Code, Section 2663, and that states  
8 that the Secretary of the Military Department may have  
9 proceedings brought in the name of the United States  
10 in a court of proper jurisdiction to require by  
11 condemnation any interest in land for the production  
12 of nitrates or other compounds, and for the manufacture  
13 of explosives or munitions of war, or the development  
14 of transmission power for the operation of those plants.

15 Now, I do not know if they are talking about  
16 water power in that area or not, but it says that in  
17 time of war or when war is imminent then the United  
18 States may immediately upon filing of a petition of  
19 condemnation under subsection (a) take and use the  
20 land to the extent of the interest sought to be  
21 acquired.

22 THE COURT: Are you saying that we are at war  
23 or that war is imminent?

24 MR. HYMAN: I do not know what the legal sense  
25 of that is. Last time I looked with respect to

1  
2 World War II, it was still not over. It is not the  
3 Government's purpose to try all the issues. We are  
4 trying the sufficiency of the EIS.

5 THE COURT: As I say, under the record as I  
6 have it, based upon the hearings last summer and what  
7 I have learned in the last week or so, I am going to  
8 assume that the State or acting through its  
9 municipalities can prevent oil pipelines from being  
10 run in the state or in selected areas of the state.

11 MR. KAUFMAN: The only purpose of my question  
12 was to establish that between the municipalities on the  
13 one side, and the State on the other, it happens to be  
14 the State in New Jersey that has jurisdiction. I will  
15 amend my question and ask him that directly.

16 Q As between the towns, counties and municipali-  
17 ties of New Jersey on the one hand, and the State of New  
18 Jersey on the other, who controls the submerged land between  
19 the bulkhead line and the three-mile limit?

20 MR. HYMAN: You said you would allow the  
21 question on further qualification. If he is familiar  
22 with Title 43 Section 1313 and the transfer of  
23 ownership and the provisions contained therein, and I  
24 didn't hear any of those questions.

25 THE COURT: The question is just as respects



1  
2 New Jersey State Law.

3 MR. HYMAN: But that's exactly the point, your  
4 Honor. I think it has to be conceded that New Jersey,  
5 prior to 1950, did not own anything past the high  
6 water mark. When I was a young lawyer and tried title  
7 cases, you had to show a chain of title. It  
8 an assumption that New Jersey owns the land. I do not  
9 think that is a fair assumption. I think the question  
10 has to be when did New Jersey acquire title under any  
11 reservation of rights of title, and then to ask the  
12 question.

13 THE COURT: Overruled.

14 Q Will you answer the question, between the State  
15 and the municipalities or other lower sets of governments, who  
16 controls the submerged land off New Jersey?

17 A The State of New Jersey is the trustee for the  
18 people of the state.

19 Q During the year 1976, the entire year, and until  
20 today, 1977, has the New Jersey Legislature passed any bill  
21 dealing with the capacity or ability or method of conveying  
22 or allocating state properties or lands under the Atlantic  
23 out to the three-mile limit?

24 A No, they have not.

25 Q The law today then is the same as the

1  
2 Department of Interior or the Secretary would have found it  
3 while the impact statement was being prepared last year; is  
4 that correct?

5 A That's correct.

6 THE COURT: Let me get this straight:

7 Don't they have sewer lines that go out to sea?

8 THE WITNESS: There are certain sewer lines, yes,  
9 but there was no specific legislation for that purpose.

10 THE COURT: You mean the people just run sewer  
11 lines out without getting state permission?

12 THE WITNESS: Those are exceptions under state  
13 administration. In the laying of those sewer pipes,  
14 there were pre-required permits that would be obtained.

15 THE COURT: From whom?

16 THE WITNESS: From the state agency.

17 THE COURT: You have to have a permit to lay  
18 such a pipeline?

19 THE WITNESS: Yes, you do have to have such a  
20 permit.

21 THE COURT: All right.

22  
23 (continued next page)  
24  
25



1  
2 Q In your capacity as Deputy Public Advocate,  
3 have you examined the question of whether legal methods exist  
4 under New Jersey law whereby an interest in submerged lands  
5 out to the three-mile limit can convey for purposes of laying  
6 pipe?

7 A Yes, I have.

8 Q What have you found upon examining the question?

9 A Well, I have reviewed the New Jersey statutes,  
10 12:-31, and the various other statutes, and I could cite them  
11 if you would like me to --

12 Q What are they?

13 A 13:1(b)-13, 13:1(d)-3, all pertain to the  
14 Natural Resource Council and its functions, as well as the  
15 Riperian, as well as the Natural Resource Council function  
16 with regard to Riperian laws. I have also participated in  
17 exchange of letters to the Attorney General on this question,  
18 while I was preparing this amicus brief.

19 Q I show you a letter and I ask you if you can  
20 identify it?

21 A Yes, I can.

22 Q Will you tell the Court that what letter is?

23 MR. KAUFMAN: - May we have it marked for  
24 identification?

25 A This is a letter from myself to the Attorney

1  
2 General of the State of New Jersey, dated December 16, 1976,  
3 in which I asked the question of whether or not there is any  
4 authority presently in the State of New Jersey through the  
5 Legislature or otherwise, for the conveyance of any land  
6 between what I referred to as the "Commissioner's line" and  
7 the three-mile limit.

8 Q What is the "Commissioner's line"?

9 A Well, this is a term of art that is indigenous  
10 primarily to New Jersey, but the alternative words that are  
11 occasionally used are "bulkhead line, pier line, exterior line."  
12 In New Jersey statutes, it's referred to as the "exterior  
13 line" which is 1000 feet from the mean high-water line seaward.

14 In that letter I notice at this moment it says,  
15 "1000 yards out." That should be 1000 feet out.

16 MR. KAUFMAN: I offer it into evidence.

17 MR. HYMAN: Objection.

18 THE COURT: Marked for identification.

19 THE CLERK: Plaintiff's Exhibit T238 for  
20 identification.

21 MR. KAUFMAN: I would argue that the witness  
22 has testified that the law has not changed during the  
23 period of time that this took place and the fact that he  
24 wrote the letter --

25 THE COURT: Do you have the letter of response?



1 MR. KAUFMAN: I have it.

2 THE COURT: Together they may be admissible.

3 MR. JENSEN: We would object to the introduction  
4 of that letter, as well. We believe it is hearsay.  
5 There is no evidence that indicates that this opinion  
6 from the Attorney General of the State of New Jersey  
7 was in existence at or before the time of the sale 40  
8 BIS. This is something prepared subsequent for the  
9 purpose of this litigation. It is not something that  
10 could have played a factor in the Secretary's decision.  
11 It is not even a formal opinion.  
12

13 THE COURT: Is this the kind of a letter that is  
14 normally relied upon by experts in the State of New  
15 Jersey in determining questions of law?

16 THE WITNESS: In determining questions of law  
17 addressed to the Attorney General, your Honor?

18 THE COURT: Yes.

19 THE WITNESS: The phrase "formal opinion" that  
20 Mr. ---

21 THE COURT: No. Is this the kind of response,  
22 the kind of thing that legal experts would rely upon  
23 in the State of New Jersey in determining what the  
24 law is?

25 THE WITNESS: I have never had occasion to rely

1 upon such a --

2 THE COURT: I am asking you generally --

3 MR. HYMAN: I think you can ask him things from  
4 the rule, but to tell him what the rule is and then  
5 ask him --

6 THE COURT: He is a lawyer.

7 MR. HYMAN: That is the trouble with lawyers,  
8 your Honor. At least everybody here knows. I was told  
9 that judges resign from the Bar when they ascend to the  
10 bench.

11 He is a witness. He has not been qualified as  
12 an expert.

13 THE COURT: I think more highly of lawyers than  
14 you do, apparently.

15 Rule 703 of the Federal Rules of Evidence  
16 permits hearsay to come in if it is the kind of hear-  
17 say that an expert would normally rely upon. I am  
18 using you as an expert on New Jersey law. Is this the  
19 kind of thing that an expert would rely upon?

20 THE WITNESS: For me to answer the question,  
21 I think I'd have to speak to this document as opposed  
22 to a general answer. I think under the circumstances,  
23 within which this particular letter was elicited from  
24 the Attorney General for purposes here, it could be  
25



1  
2 relied upon. Whether or not it would be relied upon in  
3 a court of law in New Jersey for some other purposes or  
4 this type of letter for some other purpose, I do not  
5 know.

6 THE COURT: All right, I will take it.

7 MR. KAUFMAN: I offer it into evidence.

8 THE COURT: Mark it to 238 and 239 in evidence.

9 THE CLERK: So marked.

10 (So marked.)

11 THE COURT: Better let me look at it unless he is  
12 going to read it.

13 (Document shown to Court.)

14 THE COURT: It says "convey an interest." Does  
15 that include less than a leasehold interest -- less  
16 than a freehold interest?

17 THE WITNESS: That includes any type of property  
18 interest.

19 THE COURT: Including easements to lay pipelines?

20 THE WITNESS: I would think so, your Honor.

21 THE COURT: All right.

22 Q Based upon your research and based upon those  
23 letters from the Attorney General, have you formed an opinion  
24 as to whether or not a pipeline would be necessary -- excuse  
25 me, whether legislation would be necessary in the State of New

Jersey in order to permit a pipeline to be brought across the three-mile limit to the Commissioner's line?

MR. BRUCE: I do not think that is proper. We have a document that your Honor admitted into evidence. We have a description of New Jersey law. We do not think it is appropriate.

THE COURT: It is the traditional way of finding out the law of another jurisdiction and it is certainly a convenient way.

You will be permitted to answer it, but answer it on knowledge generally available last spring.

THE WITNESS: Last spring?

THE COURT: Yes.

MR. BRUCE: Would you instruct the witness not to include the January 5, 1977 letter which has just been received into evidence in that regard?

THE COURT: Based on information that could have been obtained as of last spring or was obtained.

THE WITNESS: Would you repeat the question, please?

Q I will give you the background.

Was the information about the need for legislation available to the Secretary in 1976?

A Oh, yes.

BEST COPY AVAILABLE



1  
2 Q Based on the research that you have done and  
3 based upon the opinion there, with respect to what the State  
4 of New Jersey law was --

5 MR. HYMAN: Objection, your Honor. Specifically  
6 it violates your Honor's instructions in framing that  
7 question.

8 THE COURT: I think it is sufficiently answered.  
9 Next question.

10 Q Was the information about the need for  
11 legislation in the impact statement?

12 A I did not see it.

13 Q Did you look at the impact statement?

14 A Yes, I did.

15 MR. KAUFMAN: I have no further questions.

16 CROSS-EXAMINATION

17 BY MR. HYMAN:

18 Q May I inquire as to what law school you went to?

19 A The American University Law School, Washington,  
20 College of Law, in the District of Columbia.

21 Q Did you take courses in real estate?

22 A No, I took property law courses.

23 Q Property law courses.

24 Did they teach New Jersey law?

25 A No.

1 Q Did they teach the common law?

2 A They taught the common law.

3 Q Did they teach -- when did you graduate from law  
4 school?

5 A 1972.

6  
7 (continued next page)  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A No, none whatever.

Q All right, continue.

A In 1974 I came to the office of the Public Advocate's -- Division of Advocacy. That's when it was created. And I went with the original staff of that office, at which time I developed an interest in and pursued an interest in environmental law. And since that time I have focused on the riparian laws in the State of New Jersey, originally with regard to the public trust doctrine principles

Q Besides pipelines, sewage disposal, has the federal government ever conducted any work along the shores of New Jersey in which groins were built out into the ocean?

A I believe they have.

Q And the State of New Jersey, of course, owns the riparian rights, according to your testimony; is that correct, under the ocean?

THE COURT: A thousand feet.

Q A thousand feet.

THE COURT: A thousand feet out.

THE WITNESS: The State of New Jersey, it is my understanding of the submerged lands act of 1953, holds title to the submerged lands, riparian lands out to the three-mile limit.

Q Of course, it was the Army Corps of Engineers

1 Q Well, let me ask one final thing and maybe to  
2 clarify it in my mind anyway.

3 If a public utility such as the one I  
4 hypothecated needed some of the land between the three-mile  
5 limit and the shore, say a half-mile worth, two miles' worth,  
6 take a big chunk of it, and they need this to expand their  
7 facilities to provide service to their customers, is there a  
8 prohibition under New Jersey law for them to get that land?

9 A There is no mechanism that I know of that would  
10 provide them the avenue through which they would get that land.

11 Q So there is no mechanism for them to -- to  
12 obtain land from the state? Is that what you are saying?

13 A At present, beyond that exterior line, I don't  
14 know of any mechanism, no.

15 Q Is that related just to that underwater land or  
16 inland?

17 A Riparian grants or permits are to the submerged  
18 lands beneath the water.

19 Q Is there any differentiation between -- in the  
20 public utility status among the type of land?

21 A I am not an expert in that area, either.

22 THE COURT: I am now in a state of some  
23 confusion. You say from the exterior line to the  
24 thousand feet out, who controls that?  
25



2 THE WITNESS: To the exterior line, is that?

3 THE COURT: At the thousand feet.

4 THE WITNESS: Yes.

5 THE COURT: From the exterior line out, the  
6 State owns it, but nobody at the moment has the power  
7 to lease.

8 THE WITNESS: There's been no technique or  
9 mechanism developed for the transfer of an interest or  
10 title in the land beneath 1000 feet out and the three-  
11 mile limit.

12 THE COURT: From 1000 feet to the high-water  
13 mark, is there an ability to lease that?

14 THE WITNESS: Yes, there is.

15 THE COURT: Who has that?

16 THE WITNESS: That's -- that is the ability of  
17 the Natural Resources Council which has the  
18 responsibility of executing the riparian laws of the  
19 State.

20 THE COURT: From the high-water mark inland,  
21 who has it?

22 THE WITNESS: From the high-water line?

23 THE COURT: In a municipality.

24 THE WITNESS: Pardon me?

25 THE COURT: In an organized municipality.

1 I suppose that would be any place.

2  
3 THE WITNESS: Depending on the type of the  
4 facility. If the facility that you would like to build  
5 or construct is designed in the coastal area facility  
6 review act, then the State has the authority to  
7 under the -- in the Department of Environmental  
8 Protection to determine whether a permit should issue.  
9 If it is a minor facility that is not designed in the  
10 CAFRA statutes or an auxiliary reserve statute, then  
11 the municipality --

12 THE COURT: What about a pipeline? That's what  
13 we are talking about. What kind of a facility is that?

14 THE WITNESS: That is defined in the Coastal  
15 Area Facility Review Act.

16 THE COURT: So they would be able to override  
17 the municipality? At least so far as you know.

18 THE WITNESS: As far as I know, the -- it's  
19 hard for me to say that they would override a  
20 municipality.

21 THE COURT: Would be able to, not whether they  
22 would politically. I want to know what the legal position  
23 is.

24 THE WITNESS: Legally, I think the State has  
25 the power if it chose to go against the wishes of



1 the municipality.

2  
3 THE COURT: Who owns title to the beaches?

4 THE WITNESS: When you say beaches, you're  
5 talking about wetlands?

6 THE COURT: Dry sand above the high water mark.

7 THE WITNESS: It can be a private individual or  
8 a municipality.

9 THE COURT: But if it's a municipal beach, can  
10 the State permit lines to go under that municipal beach?

11 THE WITNESS: I don't know.

12 THE COURT: Is there a state power to condemn  
13 for gas pipelines?

14 THE WITNESS: To condemn? I am not sure.

15 THE COURT: What about the public utilities?  
16 Do they run a pipeline and condemn?

17 THE WITNESS: Authority with the -- with the  
18 authority -- with the permit, I think they could. I  
19 don't know where the pipeline would lie.

20 THE COURT: You have to get the Public Service  
21 Commission Authority? Did they have independent power  
22 to condemn?

23 THE WITNESS: The Public Utility Commission?  
24 I am not sure whether they have the authority to  
25 condemn.

Corman-cross/Hyman

1  
2 THE COURT: So the net is you don't really know  
3 what the law is on -- at least, I don't say that  
4 critically. I assume nobody knows.

5 THE WITNESS: This is exactly the point, your  
6 Honor. Because I think that in my letter to the  
7 Attorney General I pointed out something to the State  
8 that they -- they never had to deal with this problem.  
9 And the fact that they continually mention in their  
10 letter to the Secretary of the Interior that they have  
11 problems with onshore arrangements in the future indi-  
12 cates to me that they are suddenly aware of the fact  
13 that they do not have mechanisms to deal with the new-  
14 ness of this enterprise. I don't feel as an expert in  
15 this area generally because there is no real body of  
16 law on this subject. I have my opinions and they are  
17 only limited.

18 THE COURT: All right. It's very helpful to  
19 know that you can't be more helpful.

20 THE WITNESS: I am sorry.

21 THE COURT: All right. Thank you very much.

22 Next witness.

23 (Witness excused.)

24 MR. LIKE: Suffolk County calls Mr. Christopher  
25 Rand.



in evidence as Exhibit 84 which was his criticism of the program, of PDOD.

That criticism was forwarded to the Secretary before the issuance of the final environmental statement in May of 1976 by a transmittal letter from myself which has been marked in evidence as Exhibit 99.

Both of the documents that have been authored by Mr. Rand have already been marked in evidence in connection with the hearing.

THE COURT: Is there a motion to strike?

MR. LAFITTE: Yes.

MR. HYMAN: They were offered over our objection.

THE COURT: I understand that. We didn't have time and he couldn't be here. Now that he is here is there a motion to strike?

MR. HYMAN: Yes.

THE COURT: I grant the motion. That relates to Exhibit 76 --

MR. LIKE: 76 was the affidavit and --sorry, 84 was the critique. Your Honor, in your order striking this, I believe it should be extended to strike all documents that were introduced by either industry or the Government which were not subjected

1  
2 to cross-examination.

3 THE COURT: You better give me specific  
4 numbers.

5 MR. LIKE: There's a whole slew of them. They  
6 were coming in like snow flakes at the very close of  
7 the hearing. They were all received in evidence.

8 THE COURT: You better get it clear.

9 MR. HYMAN: Mr. Like, if that application is  
10 made I make to move and strike every document put  
11 in by the Plaintiffs and I guarantee you if we count  
12 them one for one, there were documents that were put  
13 in not subject to cross-examination were at least  
14 two to one as to the defendants documents.

15 MR. LIKE: It seems to me --

16 MR. HYMAN: If you remember we put fifteen  
17 minutes just putting everything on your desk.

18 THE COURT: Excuse me, gentlemen and madame,  
19 unless we have a specific motion directed to specific  
20 numbers, they are in as they were. I've now made 76  
21 and 84 items for identification.

22 MR. LIKE: I ask you to reconsider that and  
23 withdraw the ruling, allow it to be in evidence sub-  
24 ject to credibility, subject to cross-examination  
25 and giving the documents whatever weight your Honor



6

1

Duncin-direct-Like

2

deems fit after listening to this witness.

3

THE COURT: No. You can always renew your offer but as of now they are for identification only.

5

MR. LIKE: Very well.

6

THE COURT: Enjoy your lunch. See you at about 2:45 or thereabouts.

7

8

(continued next page)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## AFTERNOON SESSION

hs/ss

lpml

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CHRISTOPHER RAND, having been previously  
duly sworn, resumes the stand and testifies further as  
follows:

## DIRECT EXAMINATION

BY MR. LIKE: (Continued)

Q Mr. Rand, would you please briefly review the  
data sources which you consulted in preparation for your  
testimony?

A Yes, I to a large degree consulted the same  
sources I used in my book, and which are referenced in my  
book and other articles that I have written. These are  
primarily materials in the published record, one way or  
another. Volumes of hearings and testimony and appendices  
of the Senate Subcommittee on Multi-National Corporations,  
and the Senate Subcommittee on Anti-Trusts and Monopolies,  
books of various kinds on the oil industry, modern Middle  
Eastern history, and petroleum pamphlets --

Q What are those publications?

A They are so called industry publications which  
are generally not available to the public. It is hard to  
get them. A subscription to those publications run about  
\$500 a year and they are for the edification of people within  
the industry. I suspect that they are also used as  
conduits for information from one company or group or



consortium or joint venture to another.

MR. BRUCE: That was unresponsive and obviously speculation, for no basis has been laid.

THE COURT: Strike it.

Q Did you consult any FDC materials?

A Yes, I have read the International Petroleum Cartel 1952 study and the Evolution of the International Oil Industry and Middle Eastern press materials and other materials. Among the daily publications which I have been consulting on a regular basis for a number of years now the Egyptian newspaper Al Ahram, the Kuwait publications Al Siyasa, Al-Ra'i and Al-'Amm, the Lebanese publication Al-Wahar, the Iranian publication Ettelaat Kayham, and I have also read original books in the Arabic language such as the The Oil Issue in Iraq, which is a book printed in Beirut in 1967 by a former Iraqi government official, and the magazine Arab Oil & Gas.

Q Did you look at any publications or materials published by the Federal Energy Administration?

A Yes, I have. Among them, I guess, you could certainly classify this document, Analysis of the Alternatives Available for the Transportation and Disposition of Atlantic Oil Slope Crude --

Q You are referring now to Plaintiff's Exhibits

Rand-direct

1474

3 1  
2 T-219-A and T-219?

3 A Yes.

4 Q Did you, Mr. Rand, review the problematic  
5 as to the environmental statement of Sale 40?

6 A Yes, I did.

7 Q You review any particular section of the  
8 problematic environmental statement?

9 A Yes, I did.

10 Q Which sections?

11 A The sections that are in my position here,  
12 which I believe are discussions of alternatives to the  
13 proposed action in FES Sale 40 and FES 75, alternatives to  
14 the proposed action.

15 Q Would you tell us, please, what your findings  
16 were upon reviewing the problematic documents and the  
17 environmental statements with respect to the treatment of  
18 alternatives by the Secretary in those documents?

19 MR. HYMAN: Objection, your Honor, as to the  
20 PDOD documents, this Court has considered PDOD  
21 documents, and that the use of the PDOD was proper  
22 and as the Supreme Court stated this can be done when  
23 there is an important administration decision required.

24 We have argued and briefed this to the Court.  
25 This Court has ruled in essence that it will not



1  
2 consider sales in other areas. I feel that this  
3 testimony is unwarranted --

4 THE COURT: Overruled.

5 MR. BRUCE: I would like to make a record on  
6 the same point and join in the Government's position.  
7 These are summary type materials prepared for the  
8 decision-maker. The plaintiffs never laid an  
9 appropriate foundation, either preliminarily at the  
10 injunction or at trial. We believe it should not be  
11 the subject of testimony and in that cite your  
12 Honor the Second Circuit decision in the Natural  
13 Nutritional Association vs. the FDA, 491 Fed 2d 1141,  
14 which was cited in 1974, which states under the most  
15 unusual circumstances where there's some evidence of  
16 impropriety or something of that sort, is it  
17 appropriate for the Courts to inquire into these  
18 internal decision-making memorandums.

19 THE COURT: Overruled.

20 MR. LIKE: Could we have the Reporter read'  
21 back the question?

22 THE COURT: Yes.

23 ( Question read.)

24 MR. HYMAN: May we have a specific  
25 environmental statement that the question refers to

1 in the sale 40 --

2  
3 MR. LIKE: The question is broadly phrased and  
4 covers all the decision documents as reviewed by the  
5 witness in his testimony. He previously identified --  
6 said he read all the decision-making documents --

7 THE COURT: The four documents?

8 MR. LIKE: Yes.

9 MR. BRUCE: One final thing for the record:

10 In light of your Honor's ruling before the  
11 lunch break, we'd move to strike at this point  
12 Plaintiff's Exhibit 6-A and Plaintiff's Exhibit 7,  
13 introduced at the preliminary injunction hearing in  
14 July, being the problematic PDOD and the PDOD for  
15 sale 40.

16 MR. HYMAN: The Government joins in that  
17 motion.

18 THE COURT: Denied.

19 Q Do you have the question before you?

20 A Yes, I would say that I found it -- both the  
21 PDOD and the FEI to be deficient in their treatment of the  
22 alternatives to policies which -- it seems are being  
23 adopted or which the PDOD and the FEI -- either or --  
24 decided should be adopted. They were deficient in at least  
25 five respects in considering reasonable alternatives to



1  
2 policies.

3 MR. HYMAN: The Government objects to the  
4 answer. The Government moves that it be stricken on  
5 the grounds that there is no basis for the opinion by  
6 this witness. He has not shown any expertise in  
7 drafting PDOD's or in preparing environmental  
8 statements for the Department of the Interior. His  
9 background is that of a writer who read many many  
10 hearsay documents in Arabic and Persian and English  
11 and who has heard rumors in the industry and who has  
12 written a book and who sells that book, which book  
13 I understand is a condemnation of the oil industry,  
14 which is presently on sale or has been on sale, and  
15 there is no basis in fact for the question presented  
16 to this witness as an expert. He has no technical  
17 background. He just doesn't have the background to  
18 answer that statement.

19 THE COURT: Overruled.

20 Q Please continue.

21 A That's in brief the gist of my observations.  
22 I think in five general areas --

23 Q Would you start with the first general area that  
24 you found deficient?

25 A I think the PDOD's and the FES's -- I'll just

say "Those documents" from now on --

1478

Q The decision documents.

A The decision documents failed to consider several important points with respect to United States domestic production of oil. It failed to consider the possibility that the United States oil production may not decline in the next few years.

No consideration, to speak of, of several important alternatives to oil production from the Baltimore Canyon or any other unleased OCS lands.

I'd say in general, it simply did not consider the various other sources of energy that might be available domestically.

Q What other domestic sources of oil in your opinion or alternatives were known in May of 1976 by the Secretary, which should have been known by the Secretary in May of 1976, which he did not consider as alternatives to drilling in the Sale 40 area?

A There are several:

There is the oil from the north slope of Alaska, there's oil which could be produced but has not been produced from certain field in the Gulf of Mexico, and it did not consider expanded production of heavy oil reserves primarily, but not exclusively, in California. They did not



1  
2 give this sufficient consideration.

3 I would say they underplayed, underestimated  
4 the production capability of the Elk Hills Naval Petroleum  
5 Reserve in California. I think those are the main areas  
6 within the United States --

7 Q Let's turn first --

8 A -- of oil production.

9 Q Let us turn first to the Alaska north slope  
10 oil field. Did you make an investigation as to what the  
11 Alaska north slope oil field represented as a potential  
12 source -- as an alternative to OCS Lease 40?

13 A I think it's quite clear that production from  
14 the Alaska north slope from one of three oil producing  
15 zones, the Sandler-Ochit production would reach a minimum  
16 of, by the most conservative figures, \$1.6-million a day and  
17 would probably be substantially higher than that.

18 For example, it is my understanding from a  
19 representative of Atlantic Richfield --

20 MR. BRUCE: This is obviously hearsay.

21 His understanding of what some witness testified to  
22 someplace?

23 THE COURT: I will permit it.

24 You will have to speak a little more slowly,  
25 otherwise the Reporter won't get it.

1  
2 A (Continuing) It is my understanding that the  
3 Sandler Ochit zone could produce as much as 16-billion  
4 barrels, according to the spokesman of Atlantic Richfield,  
5 and if you consider 16-billion barrels, that would be well  
6 over 2-million barrels a day --

7 Q By what year?

8 A I would say as soon as the pipeline is  
9 completed.

10 It would take some time now to drill the wells  
11 to get the production in that field up to that rate, but I  
12 think it could be done within a year, year and a half. I  
13 have known of instances in other inhospitable areas where it  
14 was done when the motive was there.

15 (Continued next page.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



2 Q How would that oil -- withdrawn.

3 Do you know whether or not that oil from the  
4 Alaskan North Slope would be totally absorbed on the West  
5 Coast in petroleum Administration Defense District 5?

6 A Although the total production is only --  
7 let us say the total production of three million barrels  
8 a day is not substantially greater than current, PAD5's  
9 demands nonetheless -- PAD5 would not absorb that oil.

10 Q Would there be a surplus?

11 A There would be a very large surplus. There is  
12 some debate. Certainly 600,000 barrels a day plus, even in  
13 the very near future.

14 Q What is the source of your information as to  
15 the amount of the surplus?

16 A There are several.

17 There is a report by the California Division  
18 of State Lands --

19 Q Date, please?

20 A I am afraid that one is after the period, but  
21 if you will permit me to look in my various references, I  
22 might be able to find some reference. There were several  
23 articles in the Oil and Gas Journal, dated late '75, early  
24 '76, in which Sohio was quoted as saying that there was  
25 going to be such a surplus of oil from the North Slope of

1  
2 Alaska, that it would be necessary to develop a transportatio  
3 system preferably across the southwestern United States, to  
4 take that oil to the eastern part of the United States.

5 In other words, there would be enough surplus  
6 oil coming out of Alaska to justify construction of such a  
7 transportation system.

8 Q By what mode of petroleum transport would the  
9 Alaskan surplus be moved to crude-deficient markets?

10 A By pipeline or by tanker.

11 Q Can you tell us briefly what the routes of  
12 transportation would be under either of the modes?

13 A Yes, by tanker -- let me start with the  
14 pipeline first, because there are more pipelines involved.  
15 By pipeline you would have several alternate routes. One  
16 would be the projected Sohio system starting at the city of  
17 Long Beach and going across southern California, then  
18 pre-empting the unused El Paso lines, to Jaal, New Mexico,  
19 then another line from Jaal, New Mexico to Midland, Texas,  
20 and from Midland, Texas crude oil pipelines spanning out  
21 to mid-continental United States.

22 There is another route which could go across  
23 northern British Colombia, Prince Rupert and through Yellow  
24 Knife Pass to the Edmonton area, or from the Puget Sound  
25 area following the right of way of the Great Northern



1 Railroad to Mankato, Minnesota. That is a good system,  
2 because the right of way already exists for the entire length  
3 of the route. In Mankato it would join other pipeline  
4 systems.  
5

6 There could also be a pipeline laid across  
7 the Panama Zone or Guatamala.

8 As for tankers, the only feasible route by  
9 tanker would be up through the Panama Canal from Velez,  
10 which is the terminus in Alaska.

11 Q Where would it go from the Panama Canal?

12 A From the Panama Canal it would go probably to  
13 Houston, but it could go to other ports, Philadelphia.

14 Q If it went to Houston, are there means of  
15 transporting the oil by pipeline to eastern markets?

16 A Yes, there are.

17 Q Any place?

18 A Yes, there are. It might be necessary to  
19 refine that but there are pipelines.

20 Q Did you find any discussion in any of the  
21 decision documents with respect to a potential Alaskan North  
22 Slope surplus and an assessment of the feasibility in  
23 transporting that Alaskan surplus to eastern markets?

24 A Absolutely none. The only reference was in  
25 one of those FES. It did mention that Alaska will be

1  
2 producing two and a half million barrels a day. That's all  
3 it said. It had nothing to say about the implication of that  
4 statement.

5 Q Are you aware of any statement by the Secretary  
6 of the Interior, made prior to May of 1976, evidencing his  
7 awareness of the status of the Alaskan North Slope crude?

8 A Yes, I believe Secretary Morton in 1975 made  
9 the statement that he believed there was going to be a surplus.

10 Q Do you know where he made that statement?

11 A No, I can't rightfully recall. On the other  
12 hand, there are statements by the Federal Energy Administra-  
13 tion. For example, William Rosenberg was quoted in the Wall  
14 Street Journal of March 18, 1976 as stating that there would  
15 be such a surplus of Alaskan crude oil on the West Coast,  
16 that it would be necessary to send this crude oil to Japan.

17 This was carried on page 2 of the Wall Street  
18 Journal.

19  
20 (continued next page)  
21  
22  
23  
24  
25



1  
2 Q Have you determined whether there are any  
3 government reports which confirm the statements made by you  
4 with respect to the existence of a potential Alaskan oil  
5 slope surplus?

6 A There was Mr. Rosenberg's statement. Certainly  
7 there have been California State documents. The one I referred  
8 to earlier, the California Division of State Lands Preliminary  
9 Analysis of the Sohio project, Sacramento, California, which  
10 was dated January, '76.

11 Q I call your attention to Plaintiff's Exhibit  
12 T219A, a report by the Federal Energy Administration, dated  
13 November 30, 1976.

14 Did you review that report?

15 A I skimmed through it, yes.

16 Q Did you find anything in that report confirming  
17 that it was the Federal Energy Administration -- anything  
18 pertaining to the fact that there would be sizable Alaskan  
19 north slope crude oil surplus?

20 A I think the report -- yes. Basically, it is  
21 steeped in the premise that there will be.

22 Q Did you also find confirmation of the potential  
23 Alaskan north slope crude oil in the executive summary  
24 issued by the Federal Energy Administration, which is  
25 marked Plaintiff's Exhibit T219 for identification?

Rand-direct

1486

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Yes, I have.

MR. LIKE: Your Honor, I would like to offer in evidence the two documents issued by the Federal Energy Administration, namely, Plaintiff's Exhibit T219 and T219A, which confirm the FEA's assessment of the Alaskan north slope crude oil surplus.

THE COURT: 219 is dated --

MR. LIKE: November 30th. Both of them are dated November 30, 1976.

MR. HYMAN: Objection.

MR. LIKE: However, may I say that the historical data which is contained in these documents refer to events and statements by the Secretary of the Interior prior to the issuance of the May, 1976 statement.

If I may give you a citation, your Honor, to this report -- according to this report, Secretary Morton, in April of 1973 predicted that the West Coast demand was more than sufficient to absorb the added production from the North Alaskan crude oil in addition to crude oil with respect to be produced elsewhere in the District 5, and that there was no need at that time to export such oil. This is stated in Plaintiff's T219A, at pages 00011 to 00016.



1 document because obviously this took place after the  
2 decision, but it does contain information setting  
3 forth knowledge of the Interior Department with  
4 respect to the alleged Alaskan surplus.  
5

6 THE COURT: No, I won't take it. I instruct  
7 the witness not to testify with respect to any  
8 information gotten generally available before the  
9 spring of 1976.

10 Q Was the information with respect to the  
11 Alaskan surplus generally available before the spring of 1976?

12 A Oh, yes, it most certainly was.

13 Q Was it specifically available to the Secretary  
14 of Interior?

15 A Well --

16 MR. HYMAN: Objection. I would like to have a  
17 voir dire on this. This is a writer. He is not in  
18 government. He had no conversations with the  
19 Secretary of the Interior -- I don't know which  
20 Secretary of the Interior, Morton or the -- I don't  
21 know who is the one we have now. But the point is  
22 this is a lot of speculative stuff and really has no  
23 basis for anything.

24 THE COURT: No, overruled.

25 Q You testified regarding a naval petroleum

1  
2 reserve alternative to OCS Sale 40. Would you tell us what  
3 information you obtained prior to May of 1976 with respect  
4 to the naval reserve potential?

5 A Yes. I'm talking here about the naval  
6 petroleum reserve in Elk Hills, which is generally stated by  
7 the industry and general public as having a production  
8 potential of 250,000 barrels a day. I was informed in the  
9 spring of 1976 -- early May of 1976 by a Mr. Burch, a civilian  
10 employee of the Navy, who is in charge of developing Elk  
11 Hills -- the Elk Hills naval petroleum reserve, that the  
12 Navy assumed that Elk Hills naval petroleum has a minimum  
13 production potential of 400,000 barrels a day.

14 MR. LAFITTE: We must object to this testimony  
15 and move to strike it on the grounds of hearsay.

16 THE COURT: Is the kind of information experts  
17 and the field rely upon?

18 THE WITNESS: What did you say?

19 THE COURT: Is this the kind of information  
20 experts rely upon in assessing --

21 THE WITNESS: Well, I think --

22 THE COURT: (Continuing) -- production?

23 THE WITNESS: A statement for attribution by  
24 the top civilian employee of the Navy in developing  
25 the Elk Hills naval reserve, a statement that he made



6

1

Rand-direct

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

to me stating that it had a production potential of a minimum of 400,000 barrels a day is extremely -- an extremely reliable statement. Yes, I would certainly rely on that. I would not hesitate for one minute in publishing it or in being quoted as having heard that and as stating it. And I think Mr. Burch would not have told me this had he not been prepared to stand by it.

And more than that, he probably was basing this on published documents which I unfortunately have not seen within the Navy -- or let's say, printed material within the Navy regarding the development of Elk Hills.

MR. HYMAN: May I say something? If he can show that the Department Secretary, the Department of the Interior was with him when he made -- when he posed that question and got the answer, since he admitted it was a conversation between the witness and this gentleman from the Navy Department, that the information is not generally published by the Navy, and there is no way that the Secretary of Interior could know what the Navy thinks it's got over there -- I mean this is the kind of unreliable information and the path that we are going down by this type of testimony with this witness.

7 1 Rand-direct

2 THE COURT: I will permit it.

3 Q Did you find any reference in any of the  
4 decision documents of the existence of the Elk Hills naval  
5 reserve potential?

6 A I don't believe I saw a single one. I did see  
7 some reference to naval reserve 4, which is Northern Alaska,  
8 but as was the case with the crude oil north slope, I saw no  
9 impact on the domestic oil demand.

10 Q You mentioned a naval reserve one and a naval  
11 reserve four. Where is the naval reserve one?

12 A That's in the -- I am sorry. Naval Reserve 1  
13 is Elk Hills reserve which is located in the southwestern  
14 quadrant of Kern County, which is in the central valley of  
15 California.

16 Q And the naval reserve 4 is located where?

17 A That's in Northern Alaska, west of Prudenco Bay's  
18 oil fields.

19 Q You say you found a reference in the decision  
20 documents to Naval Reserve 4?

21 A Yes.

22 Q The Alaskan deposits, but not the Californian  
23 deposits?

24 A That's correct. I am sorry. I take that back.  
25 I did see a reference to the Elk Hills reserve, but it said



1  
2 it could be .2 million barrels a day, which is half of what  
3 Mr. Burch told me it could produce, and didn't again say  
4 anything about the -- it offered no constructure about the  
5 implications of this through domestic energy demand.

6 Q Was there any reference in any of the  
7 decision documents in the naval reserve 4, the Alaskan  
8 deposits?

9 A Just the one on that in that same paragraph as  
10 naval reserve 1. But again --

11 Q I am talking about 4.

12 A That's right. Yes. It says -- and I quote,  
13 the Alaskan reserve No. 4 could be producing a full two  
14 million barrels per day under the same assumption -- same  
15 assumption being TIB, accelerated development, assuming  
16 \$11 a barrel price.

17 Q What document are you referring to?

18 A I am referring to one of the two FES programs.  
19 FES 75 Vol. 2.

20 Q Page?

21 A 317.

22 Q Thank you.

23 Did you also check out the potential of the  
24 deposits known as Santa Inez?

25 A Yes.

1  
2 Q Tell us what information you obtained in that  
3 regard and also what statements, if any, is to be found in  
4 the decision documents regarding the Santa Inez deposits?

5 A To my knowledge, again, I can't remember any  
6 statements in any of the decision-making documents regarding  
7 the Santa Inez area, which is actually a cluster of fields  
8 usually leased to Exxon -- partially to Exxon exclusively and  
9 partially to -- partially to Exxon in conjunction with  
10 Standard Oil of California. The Santa Inez unit -- the  
11 United States Geological Survey produced a series of  
12 documents which ordinary people like us are not allowed to  
13 see. And so I -- I therefore was not able to see it. But  
14 I know a fellow who in conjunction with a court action  
15 brought by the organization to get oil in Santa Barbara --  
16 his name is Robert Sharpe. And he is a -- he is a retired  
17 drilling engineer, petroleum engineer. He was allowed by  
18 the USGS to look at this document, this study by the USGS  
19 of naval -- I am sorry -- of the Santa Inez cluster. And  
20 his observation was that the recoverable reserves --

21 MR. LAFITTE: Excuse me.

22  
23 (continued next page)  
24  
25



JB:jk 1

2pm R2

Rand-direct

2 MR. LIKE: Could we have him finish his answer  
3 without being interrupted by --

4 MR. LAFITTE: Of course that's very difficult,  
5 your Honor, when the question is simply, will you tell  
6 us, and then the answer goes on to what was told to  
7 the witness, and it seems to me to be about a  
8 document usually relied upon by experts in this court  
9 that might be helpful to the Court, but when he goes  
10 down the trail about what this gentleman might have  
11 been told by someone, I say it's rank hearsay and not  
12 admissible.

13 THE COURT: Well, I am going to allow this.

14 I would like you to make it brief. I don't  
15 think I am going to put much reliance on this line of  
16 the testimony. I must say that I think the Secretary  
17 is entitled to the conventional wisdom which is --

18 MR. LIKE: Well, your Honor, if I may, the  
19 function of the Environmental Impact Statement and the  
20 decision documents is to disclose whether the  
21 conventional wisdom is in fact wisdom and whether or  
22 not it is founded upon the best data and whether it  
23 represents a rational assessment or otherwise is  
24 speculation and public mythology.

25 THE COURT: Well, with all due respect to this

1 witness -- and I don't know whether he knows all of  
2 this or he doesn't -- and I have no way of knowing.  
3 I am not going to accept his statement with respect  
4 to this enormous oil surplus that we have against the--

5  
6 MR. LIKE: Are you referring to this aspect?

7 THE COURT: I am talking about the whole line  
8 of testimony as against the assumptions that have been  
9 made in the documents that we have now. We are  
10 importing about 40 per cent of our oil now. Now, I  
11 don't know where all of these surpluses are. The  
12 assumption is, I suppose, they are being hidden. But  
13 it doesn't make sense.

14 MR. LIKE: The point is whether or not the  
15 Secretary disclosed any or evaluated the alternatives.  
16 We are not suggesting that one alternative is better  
17 than another or that that one alternative will  
18 provide a long-term solution to the problem.

19 The question is the adequacy of the Secretary's  
20 disclosure and his analysis of the alternatives.

21 THE COURT: Obviously, I am not going to be  
22 relying on any considerable extent on what somebody  
23 told this witness.

24 MR. LIKE: Well, --

25 THE COURT: I can't. And the witness'



1 testimony doesn't mean much to me.

2  
3 MR. LIKE: That's why I asked you whether or  
4 not your Honor's observations were focusing on the  
5 Santa Inez aspect.

6 THE COURT: All of this.

7 MR. LIKE: With respect to the Federal Energy  
8 Administration, your Honor, the documentation that has  
9 been cited by Mr. Rand is the FEA report.

10 THE COURT: Well, the FEA can be wrong here,  
11 too.

12 MR. LIKE: That may be. But it is the duty of  
13 the Secretary to acknowledge or disclose that the FEA  
14 has presented certain information with respect to a  
15 possible alternative. And the information with  
16 respect to that alternative is precisely the type  
17 that should be weighed by the decision-maker.

18 THE COURT: Well, there isn't any doubt, is  
19 there, that we have an increasingly oil deficit? All  
20 of this coming on is not valuable at the moment,  
21 that the Elk Hills naval reserve was supposed to be  
22 kept for emergency and it is now being produced.

23 MR. LIKE: That doesn't follow, your Honor.  
24 That is precisely the assumption that underlies the  
25 Secretary's decision documents. But the documents do

Rand-direct

not disclose that a decision-maker is to say that it is an emergency or a deficit, or consider the -- that the emergency may not occur for five years or we have time --

THE COURT: You're importing over forty per cent of our oil right now and the percentage is increased during the course of these proceedings.

MR. LIKE: We will get to the sources of foreign oil. Mr. Rand will be testifying in due course as to whether or not the Secretary adequately evaluated the source of foreign oil that was available and whether or not he has correctly characterized these sources as being unreliable. That is also part of the -- perhaps you can call it conventional wisdom. I call that the mythology that has been voiced upon the public by the industry and by the Secretary.

THE COURT: I will permit him to testify. Make your record. But make it quickly because, I say, I am not going to pay much attention to this. I am simply not in a position to make any decision here. One of the advantages that the oil companies and the experts have is that they know what this material is. Apparently, the Government doesn't.



Rand-direct

MR. BRUCE: Your Honor --

THE COURT: But I am certainly not going to make any decision on this basis.

MR. LIKE: The only decision that your Honor --

THE COURT: There are other sources.

MR. LIKE: The only decision that your Honor is required to make under the National Environmental Policy Act is not whether or not there are X barrels existing in a particular deposit. The decision is, did the Secretary disclose a particular province or particular source of oil as an alternative, and did he make an adequate analysis of the range of recoverable resources in that alternative. The alternatives that we have mentioned are almost a matter of notoriety as to Alaska. Everybody knows that there's been an Alaskan pipeline. That is, their production that is scheduled for Alaska. But the Secretary says nothing about there being a surplus which exceeds in volume the oil expected to be derived from Sale 40.

THE COURT: Nobody knows what the -- how much oil is coming out of North Alaska. Everybody knows it's going to cost an enormous amount to bring it to the East Coast. It seems to me that these problems are just beyond the Court.

Rand-direct

1  
2 I say, I will permit you to make your record,  
3 but make it quickly. And I am going to permit all of  
4 this to come in, but I tell you, I am not going to  
5 give it much weight. I am not in a position to.

6 MR. LIKE: Your Honor, I need some guidance,  
7 then. If I might ask as to what your Honor deems to  
8 be the type of discussionable alternative which  
9 belongs in an environmental impact statement? When  
10 you are dealing with the Outer Continental Shelf, it  
11 seems to me that in the NSRD v. Morton, it puts the  
12 finger on the Secretary to discuss alternatives even  
13 though he can't put them in place. And even if he  
14 has no jurisdictional authority to bring them into  
15 being. And we are talking here about alternatives  
16 that were known or should have been known to the  
17 Secretary, some of which he actually does have  
18 jurisdiction over. As, for example, the deposits  
19 that were identified by Mr. Duncan in the Gulf of  
20 Mexico area on the leases issued by the Secretary.

21 Now, it seems to me that the Act requires that  
22 the Secretary look at the reasonable range of  
23 alternatives. And the Alaskan surplus falls within  
24 that range of alternatives that a prudent decision-  
25 maker should be looking at before he makes a



1499

Rand-direct

7 1  
2 decision to lease the --

3 THE COURT: All right, make your record.  
4 I was not persuaded by all of this talk about Gulf, if  
5 they went all-out to produce it.

6 MR. LIKE: The problem is we have no guidance  
7 from the opinion that was issued in the summer as to  
8 what your Honor deems to be the type of alternative  
9 that the Secretary is obliged to discuss. And without  
10 those guidelines we have to rely upon case law which  
11 is cited in the briefs on alternatives.

12 THE COURT: I am delighted. Put it in. But I  
13 am telling you now I am not in a position to make  
14 these technical judgments. I don't mean any  
15 disrespect to the witness.

16 MR. LIKE: I don't want to belabor this. You  
17 are not being asked to make a technical judgment.  
18 This is where I believe the Court is -- with all due  
19 respect -- missing my point, or I am not making my  
20 point clear. You are not being asked to make a  
21 judgment that there is a certain quantity of  
22 recoverable reserves in a particular area which would  
23 yield a certain daily production. What we are asking  
24 you to do is say that's the Secretary's responsibility  
25 and he didn't identify that alternative and he made

1  
2 no effort to analyze what the potential reserves might  
3 be and what the potential daily production might be.

4 THE COURT: I understand your position. Now  
5 go ahead.

6  
7 (continued next page)  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



jb?ss

2pm2

1  
2 BY MR. LEE:

3 Q Now, aside from the information that you  
4 testified to, Mr. Rand, as to the potential of the Elk Kills  
5 Naval Reserve, did you find any information in any of the  
6 trade publications prior to May of 1976 with respect to the  
7 potential from that source?

8 A There I would have to say the record is fairly  
9 deficient. I think that it has been generally stated in the  
10 petroleum and general press that the area could produce from  
11 300 to -- from 250 to 300,000 barrels a day. For example,  
12 Bill Reitel, who writes for the San Francisco Chronicle,  
13 figures 3500,00 barrels for Elk Kills. He's been doing this  
14 now for the last two or three years.

15 Q This was before May of 1976?

16 A Yes.

17 Q You also stated earlier that the Secretary  
18 did not adequately evaluate the national reserves of heavy  
19 crude oil; is that correct?

20 A Yes. I think that is a fair statement.

21 Q Now, would you tell us what information you  
22 have on that and what your source of information is? And  
23 bear in mind the Judge's admonition that you must only  
24 refer to information that was available prior to May, 1976?

25 A Yes. Well, there are -- for example, I believe

2

1

Rand-direct

2

3

4

5

6

7

8

9

10

11

12

I stated this in my affidavit at some point. There have been documents put out by the Department of the Interior which states that the recoverable reserves of the heavy oil in the United States -- and here I refer to page 38 of my affidavit. There is a document put out by the Department of Interior for number 8352 heavy crude oil, dated 1967, and it says, quote, heavy crude oil reserves in the United States on January 1, 1976 was 106.8 stock tank barrels, of which 45.49 stock barrels were in reserves and of having characteristics considered to be most favorable for recoverable operation.

13

14

15

16

That is one source. And again I have in my conversations with people who are knowledgeable about the petroleum industry in California -- and I heard, for example, that one --

17

18

19

MR. BRUCE: Now we are having hearsay through unidentified, unnamed people who purportedly are knowledgeable.

20

21

22

23

THE WITNESS: All right.

THE COURT: I will permit it.

This is the way apparently experts work in this field.

24

25

THE WITNESS: The fellow is James MacDonald, M-a-c-D-o-n-a-l-d. And he's a consultant with a



1 lifetime in the oil industry. He has worked for  
2 Getty Oil as a West Coast manager. And he has worked  
3 for Union Oil as a West Coast manager. And he told me  
4 that the Kern River Oil Field in California had  
5 recoverable -- had total reserve in place of 4.5-  
6 million barrels -- I am sorry -- 4.5-billion barrels.  
7 That's slightly under 700-million barrels of that  
8 had been produced already, and that the Getty Oil  
9 Company for which he works as a manager on the West  
10 Coast had developed its technology to the point where  
11 it could recover 85 percent. And I would repeat,  
12 85 percent, incredible as that may seem, of the  
13 crude oil in that field.  
14

15 THE COURT: What is the cost per barrel?

16 THE WITNESS: What did you say?

17 THE COURT: What was the cost per barrel?

18 THE WITNESS: Certainly at the going cost.

19 Because there they are doing it now. He said that  
20 Getty Oil Company is producing at a rate of 85  
21 percent -- recovering 85 percent of the oil. 85  
22 percent of 4.5 minus 7 would be 85 percent of 3.8-  
23 million barrels, which would be on 3.2, 3.3, 3.4-  
24 million barrels. Something in that neighborhood.  
25 And the figures that the Government relies on, not

only from California -- and the gas figures for recovery from that field are in the neighborhood of 2.2-billion barrels.

Q Did you find any discussion of heavy crude potential in the decision documents?

A Yes. The only mention I saw -- I think this is in all of them. It quoted from the project in the independent report, the statement to the effect that it was a rather nebulous statement that under the right circumstances they could produce 2.3-million barrels per day from the heavy resources. But again I saw no real conjecture or attempt to explain or interpret the significance of this volume of production.

Q Were there any other domestic sources of oil and gas that you found were ignored in the decision documents?

A Yes. There is the production -- the volume by which production could be increased in the Gulf of Louisiana. And this was actually in some material which the Department --

Q The Gulf of Mexico?

A Yes. The Department of Interior submitted in response to your interrogatory 15-F. This is a document called, Shut-IN completely, scope of Gulf of Mexico OCS, submitted or drawn by the United States Geographical Survey,



1505

Rand-direct

Conservation Division, November 29, 1973 I believe, or '74, in which it states that Gulf Oil Production was currently running 726,000 -- 726,000 barrels per MER -- maximum efficiency recovery, and that this could be -- that, in other words, the nonproducing or shut-in oil field in the Gulf of Mexico area, production in those field could be increased by 726,000 barrels per day.

Q At what page in your affidavit do you discuss the alternative?

A Let me refer to it again. I believe -- let me see --

Q Page 36?

A Page 36.

Q And page 40?

A Yes. I discussed that on pages 36 and on page--

Q 40?

A Yes. On page 40 I also discussed it.

Q Did you find any discussion in any affidavit in any of the decision documents with respect to the alternatives of increasing production in the Gulf of Mexico?

A No, I didn't see a single word of reference to this document or to the findings expressed in this document.

(Continued next page.)

SS

1  
2 Q Turning from domestic sources, tell us what  
3 you found in the decision documents with respect to the  
4 valuation of alternatives in the form of foreign imports and  
5 your opinion as to how the Secretary treated the foreign  
6 sources?

7 A Well, I suppose the best way for us to proceed  
8 would be to start with the friendliest sources or the most  
9 "reliable"; that is the countries outside the United States  
10 which are most likely to supply us with incremental volumes  
11 of crude oil, most likely to do so because they are -- they  
12 have close bonds of friendship with us.

13 Here, of course, one, this is primarily of the U.K.,  
14 United Kingdom which has discovered a great deal of oil or  
15 where a great deal of oil has been discovered offshore in  
16 the last five years.

17 T.P.D.O.D., both decision documents, refer to the  
18 fact that oil has been discovered in the North Sea and I  
19 think they state the recoverable reserves are in the neigh-  
20 borhood of ten billion barrels, but generally available  
21 material regarding individual fields, for example as carried  
22 in the Oil and Gas Journal over the last two years, when you  
23 add up all the information that is available regarding the  
24 production levels that are targeted for these fields you get  
25 the level of production of six million barrels a day whereas



## Rand-direct-Like

1  
2 you could not produce -- it would not be sound engineering  
3 to produce six million barrels a day from only ten million  
4 barrels of reserves.

5 You should not produce at a rate not much higher than  
6 five per cent of a year your reserves. If you have ten billion  
7 barrels recoverable, that's five million a year, which is  
8 over -- well, you could perhaps stretch it to ten percent  
9 a year. That would raise it to under three million barrels  
10 a day.

11 On the other hand, if you add up all the reported  
12 projects, plans, the companies have been reported at least in  
13 the petroleum press as intending to carry out, you get six  
14 million barrels a day.

15 I don't see any of that in the P.D.O.D. I can proceed  
16 to Mexico --

17 Q What page in your affidavit do you discuss  
18 the North Sea potential?

19 A I believe I discuss it on pages 31 and 32,  
20 also on page 32 and then page 33 I discuss the reserves which  
21 have been recently discovered in Mexico.

22 Q Before you get to Mexico, so far as the North  
23 Sea is concerned, you mentioned the U.K; are there any other  
24 countries that you would regard as friendly to the United  
25 States who have production capability in the North Sea which

## Rand-direct-Like

3 1 would constitute a further alternative source of supply?

2 A Yes, sure, Norway.

3 Q Do you have any information --

4 A I'm sorry. The lump-sum figure I have given  
5 of six million barrels a day accounts for both Norway and  
6 the U.K.

7 Q You are saying that the decision documents  
8 underestimate significantly the potential daily production  
9 from the North Sea field; is that correct?

10 A Yes, they do and they don't consider the pos-  
11 sibility the North Sea might be able to produce or the  
12 companies are planning to put the North Sea into production  
13 of six million barrels a day.

14 I don't see any speculation of that all in the P.D.O.D.  
15 or any of the documents.

16 Q What other foreign alternative sources did you  
17 consider and give us your opinion as to the decision docu-  
18 ments' treatment of these foreign sources as alternatives?

19 A Certainly we have Mexico as I was about to  
20 state, the Isthmus of Tanawapek in southern Mexico has yielded  
21 up a cluster of oil fields or a string of oil fields known  
22 as the Reforma Trend.

23 There are numerous oil fields in the Reforma Trend.

24 Oil and Gas Journal of May 17, 1976 conservatively  
25



1509

Rand-direct-Like

estimates the reforma areas' reserves that might be another ten billion barrels but goes on to state they may be quite a bit higher.

Let's assume for a moment there are only ten billion barrels which I think is an extremely conservative estimate. Again, that would yield a production of over one million barrels a day. Since the Reforma field started going on extreme -- this is back in mid-75, Mexico has become an oil exporting state.

I see no speculation whatever in the P.D.O.D. that it would be possible or it might be possible to get exports from Mexico, crude oil exports from Mexico. I don't see Mexico named as a source yet before June of 1976 or late May 1976 there was information, publicly available.

Q You now take up the other alternative sources that you found in P.D.O.D. to be proficient in discussing --

A Yes, here, of course, we then finally plunge into the realm of OPEC which I haven't been talking about up to this point, the Organization of Petroleum Exporting Countries and the member states of the organization of Petroleum Exporting Countries.

I think this is important because it is one of the main contentions of the P.D.O.D. that -- well, there are two, one, that OPEC is a "cartel", and the other is that many of

1  
2 the major exporting states which belong to OPEC are arab  
3 states, states in which Arabic is the Lingua Franca.

4 It is very strongly implied in the P.D.O.D. are  
5 "reliable" sources of energy. I don't see any speculation in  
6 the P.D.O.D. or the F.E.S. as to the veracity or soundness of  
7 these statements.

8 I see no speculation, no conjecture, no discussion  
9 whatsoever in any of these documents about the nature of  
10 OPEC, the organization, about the real export strategies of  
11 OPEC states in general or arab members of OPEC.

12 I think that the P.D.O.D. and F.E.S. have failed to  
13 consider the alternate possibility that OPEC is not a cartel.  
14 It is not capable of acting in isolation, that it is supported  
15 by major international oil companies. Its actions, its per-  
16 formance is predicated or is dependent on the close coopera-  
17 tion of the major international oil firms and that the OPEC  
18 states while proclaiming that they have nationalized or large  
19 nationalized their resources still allow the major inter-  
20 national oil firms privileged and also I might add, lucrative  
21 access to OPEC reserves which third-party outsiders can't get

22 Q What significance does that close relationship  
23 between the OPEC countries and the major international oil  
24 companies have with respect to the continued flow of foreign  
25 oil into the United States?



1511

Rand-direct-Like

6 1  
2 A I think it has two effects. One is that it  
3 makes -- it means just the phrase, OPEC cartel, is one that  
4 is perhaps meaningless. If not meaningless, certainly subject  
5 to a great deal of debate.

6 The other is I do not believe that one can, in  
7 reviewing the record closely state that even the Arab states  
8 are capable of or interested in depriving us of a secure source  
9 of oil and of course I would have to throw in the caveat,  
10 unless, a total war broke out, but I think if the Arabs and  
11 the Israelis go to war again, I don't think the Arab world is  
12 going to cause us much trouble at all in our security and  
13 supply.

14 I think that people within the oil industry know this.  
15 There is material evidence to this fact in example Volume 7  
16 of the Church Subcommittee's investigations into the inter-  
17 national oil industry.

18 MR. BRUCE: If I may, before we go further,  
19 where are we going? We started with some specifics  
20 about some claimed reserves in the United States.  
21 The witness has now, about from his affidavit, delved  
22 into Middle East history, the structure of OPEC. The  
23 affidavit which we have moved goes as far as to  
24 discuss the failure of the Secretary to determine  
25 whether the Russian-United States wheat deals should

1  
2 have had an oil sweetener in it for the U.S.

3 I suspect that's coming. What are the limits  
4 of relevance in the proceeding of this sort? I submit  
5 we have gone past by this stage of the testimony. We  
6 are not talking about what is commonly accepted wisdom  
7 whether the Secretary should or should not accept it.

8 We are talking about the final national policy.  
9 We have congressional statements that we have put  
10 before your Honor before in terms of a policy of  
11 self-sufficiency and what have you.

12 This witness doesn't agree with that policy.  
13 He thinks it's wrong. He has a rationale as to why  
14 it's wrong, but I guess I have to say bluntly, so  
15 what.

16 This is a legal proceeding, advocacy of an  
17 impact statement is in issue, not this witness'  
18 viewpoint of the foreign and world policy of the  
19 United States.

20 (cont'd on next page)  
21  
22  
23  
24  
25



2 DIRECT EXAMINATION

3 BY MR. LIKE: (Continued.)

4 THE COURT: How long will the witness be on  
5 direct?

6 MR. LIKE: Sir?

7 THE COURT: How long will the witness be on  
8 direct?

9 MR. LIKE: I would think about 20 - 25 minutes.

10 Your Honor, I want to say one thing. The  
11 central premise--

12 THE COURT: Objection overruled, let's continue.

13 MR. LIKE: To get the focus on this, the central  
14 premise of the decision documents is that OCS Sale 40  
15 will reduce foreign imports. That is what runs through  
16 all of the documents and is repeated time and again.  
17 That premise is fair fame for an expert.

18 THE COURT: Go ahead.

19 MR. LIKE: Thank you.

20 Q Will you describe, please, the relationship  
21 between the OPEC nations and major oil companies? Give us  
22 your opinion as to the validity, the proposition that drilling  
23 in the OCS, Sale 40 area will reduce foreign imports.

24 A I think it's quite clear from testimony that  
25 former and current major oil company executives have given

1 before the Church subcommittee, the subcommittee on multi-  
2 national corporations of the Senate Foreign Relations Committee,  
3 it's clear from this testimony that the major oil companies  
4 have, if you will, perhaps two or three sets of constituents.  
5 They have the consumer. They have to satisfy the consumers'  
6 needs for petroleum products, but they also have to satisfy  
7 the exporting States' need for supports and their need to  
8 maintain a certain level of supports in order to maintain a  
9 reasonable cash flow, a reasonable flow of revenues into  
10 their respective State treasuries. This is especially impor-  
11 tant in the case of certain middle eastern countries, Kuwait  
12 or Saudi Arabia but also Iran, Iraq and Algeria. These  
13 countries have little resources, certainly have little exportabl  
14 hard currency earning resources --

16 Therefore, they need to have a fairly secure  
17 source of revenue. This means that the major oil companies  
18 or -- it means these nations, these oil supporting nations  
19 have to be guaranteed or have to feel secure that they are  
20 going to continue to get a certain volume of revenues.

21 Of course, if the price goes up as it did in  
22 1973 by -- if it goes up four times over as it did then,  
23 then naturally you are to some extent going to be able to cut  
24 back on revenues. However, e-en though that has been the  
25 case, nonetheless, several exporting nations cannot afford



3

1

Rand-direct-Like

2

now to cut back on their exports or to have their exports cut back to any large degree. This is especially true of Iran.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

At the same time these companies, these major international companies have made arrangements, in general, with the exporting States. This is certainly true in the and also case of Iran, it's true in the case of Kuwait, Libya, Saudi Arabia. They have made arrangements with the Government of these supporting States whereby they will still have the lion's share of exports and Iran, this has been codified in the form of a 20 year sales and purchase agreement between the National Iranian Oil Company, the state organization and the former members of the former consortium who are predominantly the seven major oil companies, 89 percent of the consortium shares were owned by the seven major oil companies, which means this crude purchase in sales agreement, among others, that the major oil companies have committed themselves to listing a certain volume of products or certain persons of exports, and at the same time they have constricted the listings of exports by the national oil companies which means that in order for exports to remain at a certain level and not to lapse, the major oil companies are going to continue to be responsible for listing this oil off and marketing it which I think leads to the premise that if they go into the Baltimore Canyon area, for example, as they

1 have, and I think it's pretty clear if you look down the list  
2 of the companies and how much they bid, how many leases they  
3 acquire, you'll find that the seven major oil companies, or  
4 four or five of them anyway, are overwhelmingly represented  
5 in their position in the Baltimore Canyon. It's dominant.  
6

7 Now, the promise is, or has been, that produc-  
8 tion from the Baltimore Canyon Sale would replace a like  
9 amount of imports. I contend by my own understanding of OPEC,  
10 my own research, my own reading, and my own observations that  
11 it is a grave mistake to take this statement on faith. That's  
12 the most charitable thing I can say about it because I think  
13 these seven major, or how many majors there are represented  
14 in a big way in the Baltimore Canyon, certainly Mobile, Exxon,  
15 Gulf, maybe Standard of California and Shell are going to be  
16 inhibited from their production of the Baltimore Canyon by  
17 their commitment to the major oil exporting nations of the  
18 world. Iran is going to say, "We have to export 5.5-6  
19 million barrels a day. You have locked us into an agreement  
20 where you are only going to allow us to market a maximum of  
21 one million barrels a day. Therefore, you are going to have  
22 to market the remaining 5 million barrels a day on your own."

23 In order to live up to this commitment,  
24 especially in times when oil demands slackens, that's gener-  
25 ally the case in the summer, in the in the industrialized

BEST COPY AVAILABLE



1 nations. Heating drops off. Gasoline makes up for this, but  
2 entirely not, in Europe that's less the case. When demand  
3 drops off, the major oil companies are going to find them-  
4 selves as they often have in the history of the OPEC nations  
5 over the last 20 years, and I've certainly made an effort to  
6 describe this in my book, shows the oil companies are going  
7 to find themselves in a real jam. They will have to cut back  
8 production somewhere, but they will be faced with a real  
9 problem if they try to cut it back in most, if not all OPEC  
10 nations because they will be depriving those nations of their  
11 revenues or of a large segment of the revenues.

12  
13 Therefore, they will probably have to cut back  
14 or at least I think it is perfectly reasonable to entertain  
15 the supposition that they probably have to cut back in the  
16 Baltimore Canyon and continue to import from Saudi Arabia.  
17 If they have to produce a certain rate from Saudi Arabia and  
18 the United States is going to take so much, they'll have to  
19 cut back to the United States. You can't back OPEC oil out  
20 of the industrial world.

21 THE COURT: I don't understand. You mean they'll  
22 get all these production wells ready to produce and  
23 not produce?

24 THE WITNESS: The record shows that they've done  
25 this already in the Gulf of Mexico.

6 1  
2 THE COURT: Isn't that terrific? We have all  
3 these wells ready to produce in case the oil is shut  
4 off from abroad, why we don't use up our own reserves?

5 THE WITNESS: Why go into Baltimore Canyon to  
6 get this shut in-capacity when you have it elsewhere?  
7 We have a shut in-capacity elsewhere in the United  
8 States of two million barrels a day plus in Alaska, of  
9 400,000 barrels a day in Elk Hills, 200,000 barrels a  
10 day and 750,000 barrels in off-shore Louisiana.

11 THE COURT: It's going to be expensive in the  
12 northeast. The northeast has it's own reserves, too.  
13 If they're not going to be producing there's no  
14 pollution problem. Oil pipelines wouldn't be carrying  
15 oil. There's no environmental problem except exploring  
16 and getting the wells ready to produce.

17 THE WITNESS: Except I see no guarantee what-  
18 ever that they're going to be given exploration lines,  
19 but when they discover field they will be denied pro-  
20 duction lines.

21 THE COURT: They have production lines. That's  
22 the whole point of the suit. They have exploration  
23 and production lines, don't you understand that?

24 THE WITNESS: Yes, I see that, but that means --

25 THE COURT: If they don't produce, what's the



7

1

2

the environmental problem? They're all ready to go.

3

We have a big reserve right here off the east coast.

4

5

6

7

8

9

10

11

THE COURT: Isn't it cheaper in the northeast region?

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE WITNESS: You mean cheaper for the ultimate consumer or cheaper for the company? I don't think it's going to be cheaper for the ultimate consumer. I think you're going to have a rolling in, as you've had over the last three years of the OPEC price, oil produced for \$4.21 in Wilmington, California by -- on land owned by the State of California is more expensive thanks to Federal energy regulations brought into a refining in the Washington area than oil imported from Saudi Arabia. I don't expect anybody in this room to believe that, but it's the gospel truth, and the Federal Energy Administration has admitted it. ARCO Atlantic Richfield has complained. It's been publicized. The authorities in the State Land Commission

7a

1

Rand-direct-Like

1520 481a

2

of the State of California have complained to me about  
it.

3

4

(Continued on next page.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1521

Rand-direct-Like

## DIRECT EXAMINATION

BY MR. LIKE (Ccnt'd):

THE COURT: I must say I'm not very much convinced by speculation. It doesn't make sense in terms of the decisions available. You may be right about all this, but it doesn't effect the decision with respect to Northeast Oil and Gas. There is a gas shortage immediately in the northeast area. The record is very clear on that. Where is the gas going to come from, from Libya?

MR. LIKE: Your Honor, that question --

THE COURT: Or Siberia?

MR. LIKE: Mr. Duncan will be testifying on that subject as to whether or not the secretary adequately evaluated the natural gas alternatives, but the point here is not what is the proper energy policy to be pursued by the United States. Again, the question is did the secretary meaningfully disclose in his decision document the alternatives and the thrust of Mr. Rand's testimony is that the secretary did not look at what seems to be an extremely important economic fact; that is the relationship of the major oil companies and the OPEC and their probable corporate behavior, the contractual restraints that inhibit these majors and the testimony

T 3 pm  
R 3  
SS/bw

1  
2 is tendered to refute what is the major premise in the  
3 statement and the justification which is offered  
4 constantly as the major justification; that is that OCS  
5 sale 40 will reduce on imports. According to Mr. Rand,  
6 this is not and he was charitable in saying that you  
7 have to take this as a faith, but in effect he's saying  
8 this is not true --

9 THE COURT: He may be right or wrong, but there  
10 are all kinds of other political pressures that will  
11 come to bear if there is a large resource off the  
12 northeast coast, the political forces in the northeast  
13 will come to bear. They have somewhat the same kind  
14 of cloud as the Saudi Arabian officials. The whole  
15 point is that it is all so speculative.

16 We are dealing in an area that really -- it  
17 isn't within the realm of the Court's knowledge or  
18 capacity.

19 MR. LIKE: I agree with you only to the extent  
20 that you say the Court cannot enter into a debate as  
21 to what is a proper energy policy. I agree with you  
22 100 percent. This is beyond the judicial function.  
23 I do not agree, however, it is beyond the realm of the  
24 Court to inquire into whether or not the secretary took  
25 a hard look at the relationship between the major oil



1  
2 companies or the marketing agents for OPEC and they're  
3 obtaining the resources of the Baltimore Canyon.

4 THE COURT: What difference does it make if  
5 they're going to put this into production form and not  
6 produce, there is no environmental problem?

7 MR. LIKE: That is an assumption.

8 THE COURT: If they are going to produce then  
9 the witness' hypothesis is not accurate. Either line  
10 of that argument doesn't help me one bit.

11 MR. LIKE: In making the decision to lease,  
12 the secretary has to examine, he has to look at the  
13 alternatives. Should we import or do everything  
14 domestically? Should we use up our reserves domestically  
15 or continue importing?

16 THE COURT: The hypothesis of this witness is  
17 they will put these reserves in the condition to  
18 produce and then not produce. That is the best of all  
19 possible world from his point of view because we will  
20 be using up foreigners oil in getting ours available  
21 for emergency purposes. I really don't see how this  
22 helps me one way or the other. Whether he's right or  
23 wrong, the secretary of the Interior was right.

24 BY MR. LIKE (Cont'd):

25 Q Do you want to address yourself to that remark?

1  
2 A I think it's pretty clear or at least I think  
3 there is a great deal of room to doubt whether or not we need  
4 to have that reserve put on stream or explored anymore  
5 than I would seriously question I say we need to have areas  
6 of Catalina land or areas over there explored.

7 The oil industry has not been forthright with  
8 the American public. It does look very much to my by reading  
9 the PDOD and other government publications, the Secretary of  
10 the Interior has with insufficient skepticism accepted the  
11 arguments of the oil industry.

12 The oil industries, individual companies and  
13 oil industry organizations, have repeatedly underestimated  
14 the volumes of reserves that can be produced from almost any  
15 area of the world where there is oil. I can give you examples  
16 until midnight on that subject if you want me to do it.

17 From reading the FES and PDOD, it seems to me the  
18 Secretary of the Interior has bought these arguments without  
19 really, at least, in some supporting document, subjecting them  
20 to some sort of scrutiny and this raises the question how many  
21 potential oil reserves in the United States belonging to the  
22 American people need to be developed before we can feel a  
23 reasonable degree of security? I would suggest that there is  
24 very strong reason to suspect we have already reached that  
25 point and even if I'm proved wrong, I think —



1525

Rand-direct-Like

5 THE COURT: If you should be proved wrong in an emergency it would certainly be a disaster. It would be too late to rectify.

THE WITNESS: I'm in distinguished company. The cabinet task force on oil imports of 1970 and I refer to this in my affidavit and this was a blue ribbon force under George Shultz, member Secretary of Labor with several other cabinet members in attendance or on the task force.

They produced a report which was later revealed, too, and discussed in the hearings of the Senate Trust Committee on anti-trust and monopoly, in 1970 which pointed out in that era we had a problem of the imports quota. The assumption was if we eliminated the imports quota and foreign oil was allowed to come in that supplies wanted to bring it in, any amount, we would be subject to growing and perhaps furnish us reliance on foreign resources of crude. The task force report cast that assumption in very grave doubt. The statistics of reasons they used, I found convincing. I think we need a national debate and we are not getting it. That is what I'm saying.

THE COURT: There is no point in my getting into the geo-politics on this. I'm not interested in the dog

1  
2 catcher politics of it. What happens in Cape May's  
3 township I simply can't get involved in these aspects.

4 MR. LIKE: You made a statement before, your  
5 Honor, that if the production in the Baltimore Canyon  
6 is shutdown or is reduced, so what, that we are in  
7 great shape from the environment standpoint; however,  
8 I believe the testimony and the documentary evidence  
9 in the record indicates that if production is reduced  
10 or if the amount of production is not as great as it  
11 should warrant, pipelines, you will have tankers.

12 There are environmental subsequences from any  
13 set of policies that may result in an inhibition or  
14 cutback in production from the Baltimore Canyon.

15 THE COURT: No, the testimony was the production  
16 would effect whether you had pipelines, the amount of  
17 reserves --

18 MR. LIKE: You are not going to build a pipeline  
19 if you are not producing. If you have a shut in  
20 capacity in the Baltimore Canyon because you are bringing  
21 oil in in order to satisfy contractual obligations to  
22 OPEC or other foreign nations, if an oil company is in  
23 that position --

24 THE COURT: The government has the right to  
25 insist on pipelines rather than tankers if there is



## Rand-direct-Like

1  
2 enough potential shown.

7  
3 MR. LIKE: The point is the Government document  
4 say pipelines are technically or economically feasible,  
5 they will not be built and they will go to tankers.

6 THE COURT: The Government will make that  
7 decision based upon productive capacity.

8 MR. LIKE: The Government has not evaluated  
9 what the particular contractual relationship between  
10 the majors and their foreign resources of supply may  
11 have upon the production rates and production volumes  
12 in Baltimore Canyon.

13 THE COURT: Again, without any disrespect to  
14 this very knowledgeable expert, that I'm not going to  
15 make the decision on this ground. It's clear to me the  
16 courts are in no position to make this judgment or even  
17 to judge whether all the factors were before the  
HS fols 18 secretary. If the secretary was in the position to  
19 nationalize all the oil, set-up a completely different  
20 system of production and distribution, we would have  
21 another case. We have the oil companies we have.  
22 I'm not going to make any assumptions of major changes,  
23 not through the courts or political agencies of the  
24 Government.

25 (Continued next page)

1

HS:jk 1  
4pm Rl 2

MR. LIKE: If I may frame the question in this fashion:

Was the Secretary under a duty to evaluate the consequences of turning over control of the prime acreage in the Baltimore canyon to the marketing agents of the OPEC nations?

That is what happened, the title to this resource zoned and controlled by the marketing agents of OPEC.

THE COURT: That was a political decision. It may have had an indirect environmental impact, certainly.

MR. LIKE: The question is whether he had the duty to evaluate the consequences.

THE COURT: It is a political question.

MR. LIKE: It is a matter of simply disclosing this, so other decision-makers can look and see what are we doing, giving over this resource to the Arabs.

THE COURT: That was the policy of the last Administration. The people voted for the President. He appointed the Secretary of the Interior. It was their policy to utilize this international group of companies. If that is what you want to characterize it as, I will not criticize or go beyond it. I am



1 not making public policy here.

2  
3 MR. HYMAN: I didn't follow the last statement,  
4 that the Government entered into contracts with the oil  
5 companies?

6 THE COURT: The Government decided to lease to  
7 the private companies which had the capital and assets  
8 to exploit it --

9 MR. HYMAN: At a public sale.

10 THE COURT: Rather than to do it itself or to  
11 explore on a contract basis. That was the policy it  
12 made and all the rest of what the witness testified to  
13 flows from that. I am not going to say they should  
14 use a different system of exploration.

15 MR. HYMAN: The public sales occurred in 1963  
16 and were carried through all political administrations --

17 THE COURT: I am not saying it in any invidious  
18 sense as to the last administration. That has been the  
19 policy for some time.

20 MR. HYMAN: Thank you. That is correct.  
21 The Court knows my political affiliation --

22 THE COURT: I do not know it and I am not  
23 interested.

24 MR. LIKE: There are two ways that I can proceed.  
25 It matters that Mr. Rand has specified at great

1  
2 length within the affidavit --

3 THE COURT: You can use that as a proffer of  
4 evidence. It is not going to be accepted. Bring it  
5 to a close. I do not find it helpful. Not because it  
6 is not interesting and useful. It is, but it is not  
7 for this Court.

8 MR. LIKE: I will offer Plaintiff's Exhibit 76,  
9 Mr. Rand's affidavit, as an offer of proof.

10 THE COURT: It is marked for identification.

11 MR. LIKE: It is already marked as 76 for  
12 identification.

13 THE COURT: It will be so treated. It has been  
14 marked. Why are you re-marking it?

15 MR. LIKE: If it is ever found again --

16 THE COURT: All right, mark another document.  
17 I will not give it double weight for the extra copy.

18 THE CLERK: 76 for identification, so marked.

19 THE COURT: Will you bring this interesting  
20 testimony to a close?

21 MR. LIKE: Yes, your Honor.

22 Would you give me a few minutes, because I  
23 want to review my notes. You cut the examination  
24 short.

25 THE COURT: Do you want five minutes?



1 MR. LIKE: Yes.

2 THE COURT: Will this be the last witness today?

3 I can run until seven o'clock.

4 MR. HYMAN: We have two more.

5 THE COURT: We have the Reporters. Let us  
6 cover some ground.

7 (Recess taken.)

8 BY MR. LIKE:

9 Q Mr. Rand, did you find any treatment in the  
10 decision documents as to the question of royalty bidding as  
11 compared to other types of bidding, and if so, would you  
12 please give us your opinion as to the quality of the --

13 MR. HYMAN: Objected to. That is contained in  
14 the affidavit. I read it before. It is in the offer  
15 of proof that they proposed.

16 THE COURT: Overruled.

17 A Yes, I certainly did scrutinize the PDOD's and  
18 the FES's and I found it again rather deficient, because with  
19 the exception of one of the FES's, the documents did not  
20 consider the alternative of royalty bidding and with one  
21 exception it was vague on the subject of what royalty bidding  
22 -- how royalty bidding would take place. It's pointless to  
23 have royalty bidding without a ceiling.

24 Q Why is that?

25

1  
2 A The whole point of royalty bidding is to induce  
3 the companies competing for a lease to commit themselves to  
4 greater payments. The objective is to get the greatest  
5 commitment that you possibly can. In this case, in the form  
6 of royalty, future payments are made as production progresses.  
7 If you set a ceiling on the royalty that may be bid for,  
8 let's say forty per cent, you are in essence destroying the  
9 purpose of the royalty bidding, which is to get as much as  
10 you can.

11 I also noticed that in general, I think, the  
12 PDOD's and the FES's were very reluctant to consider this  
13 alternative and the documents that they submitted in response  
14 to your interrogatories asking, you know, what sort of  
15 analysis they have done on the various bidding systems, I  
16 think it's totally deficient and inadequate. In the State  
17 of California in the Wilmington oil field there is a neat  
18 bidding system which has been in effect for twelve years.  
19 The Wilmington oil field is predominantly offshore. The  
20 companies who bid for this bid a net profit bonus. The  
21 company that bid or was willing to commit the highest  
22 percentage of net profits to the State from future  
23 production won the bid. In one case, the State of California  
24 got 100 per cent of the net profits. The company so wanted  
25 that oil that it was willing to bid 100 per cent of the net



1  
2 profits.

3 It is true that they take their money from  
4 inflated overhead allowances -- they charge a lot higher  
5 operating costs than might be realistic. I have heard  
6 officials in the State of California contend this. I think,  
7 on the other hand, the system has to be given thorough  
8 consideration, and also the royalty bidding system has to be  
9 given thorough consideration and was not.

10 Q Is there any relationship between the bonus  
11 system and any competitive consequences?

12 A I think the companies that have the most cash  
13 can get the leases -- can win the rights to the leases that  
14 they consider most valuable. If you look over the history of  
15 the bonus bidding system, you will find a pattern where the  
16 very companies that are powerful in OPEC -- that are in  
17 charge of marketing and moving 70 to 76 per cent of the oil  
18 that goes through international channels, are always going  
19 to be the ones dominant in the procurement of leases by a  
20 bonus system. Look at the figures. For the Baltimore  
21 Canyon sale you have 1.1 billion dollars. Something in the  
22 neighborhood of 373 million was bid by one company, Exxon.  
23 The fact is that in order to get these leases you have to  
24 bid this kind of money, which just drives out the small  
25 company not tied to any commitment elsewhere, such as Apache

1  
2 Oil doesn't have to satisfy the Saudi Government, Murphy  
3 Oil does not have to satisfy the Government of Libya, Ashland  
4 Oil does not have to satisfy the Government of Iran or the  
5 National Iranian Oil Company. If you want to produce  
6 efficiently, there is no question in my mind that the bonus  
7 bidding system is one of questionable validity, but I see  
8 no questioning of the validity in the PDOD or the FES.

9 Q Would you say that sale 40 resulted in the  
10 turning over of a substantial share of the oil and gas  
11 resources of the Baltimore Canyon to agents of the OPEC  
12 nations?

13 MR. HYMAN: Objection.

14 A Yes, I would say so.

15 Q In your opinion and based upon your experience  
16 and your research, did the decision documents adequately  
17 inform the Secretary of the Interior as of May of 1976 of  
18 the alternative sources of energy which would obviate the  
19 need for sale 40?

20 A Most emphatically, no.

21 MR. HYMAN: Objection.

22 Q Did the decision documents adequately inform  
23 the Secretary as to the likelihood that OC Sale 40 would  
24 reduce foreign imports?

25 A No, the only statement was that production



1  
2 would replace a like amount of imports.

3 Q Did the decision documents adequately inform  
4 the SEcretary as to the desirability of using the sale 40  
5 area as possible additional shut-in capacity in the event  
6 foreign contractual obligations prevent the oil --

7 MR. HYMAN: Objection.

8 THE COURT: When counsel stands, it means he  
9 is going to object.

10 MR. HYMAN: It assumes facts not in evidence,  
11 not in the record. It gives some validity in a  
12 question to the witness --

13 THE COURT: Overruled.

14 MR. LIKE: Could we have the question read?

15 THE COURT: Yes.

16 (Question read.)

17 Q -- using sale crude to back out foreign  
18 imports?

19 A I saw no consideration of that.

20 Q Did the decision documents adequately inform  
21 the SEcretary of the economic and environmental consequences  
22 of turning over large portions of the sale 40 oil and gas  
23 to the major oil companies -- the marketing agents of OPEC?

24 A Not only that, I didn't believe the decision  
25 documents even contemplated the subject.

1  
2 Q What environmental consequences might flow from  
3 a state of facts such as was postulated earlier, where the  
4 major oil companies because of contractual inhibitions,  
5 either shut in or reduced the production from the sale 40  
6 areas?

7 A Well, if they are going to be uncertain as to  
8 how much they are going to produce, they're certainly not  
9 going to build pipelines. It would cost up to a million  
10 dollars a mile to lay a pipeline. Say they find a field in  
11 the Baltimore Canyon area and they are not sure they are  
12 going to produce from the field. They are not crude hungry  
13 like Murphy or Ashland or any of the others, but then along  
14 comes a situation where suddenly they do need the oil. They  
15 will do what they have done in Saudi Arabia, in Iran, they  
16 will do what they have done in other places, they will put  
17 a production platform over the field and/or they will put a  
18 mooring facility of some kind over the wells, and either put  
19 a captive tanker in there and fill the tanker up with oil  
20 and lift it directly off that by another tanker, or they  
21 will simply produce directly into a tanker moored at a  
22 single side boom.

23 Aramco has done this in the Persian Gulf.  
24 Standard Oil of Indiana has done it on the Iranian side of  
25 the Persian Gulf. There the fields were very far out from



1 land, but they wanted the oil. They didn't want a lot of oil  
2 -- maybe they couldn't get a lot of oil -- or a lot of oil  
3 very cheaply. They could not justify the tremendous  
4 construction cost of a pipeline, so they put a production  
5 system right out there in the middle of the Gulf.

6 Q Do you know who owns the refinery capacity in  
7 the New York-New Jersey Port area and the Philadelphia area?

8 A Well, I certainly know that Exxon has a major  
9 refinery in Baytown and Standard Oil of California has a  
10 fair-to-middling refinery in Port Amboy.

11 Sun Oil has one at Marcus Hook, Pennsylvania  
12 and Getty has a big one in Delaware. I think there are  
13 several other big refineries in the Marcus area. I think  
14 Argos has one.

15  
16 (continued next page)  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2 Q If Exxon refuses to allow access to its Jersey  
3 refineries to another lessee who acquired rights in the  
4 Baltimore Canyon, what's the likelihood of --

5 MR. BRUCE: I object. The witness was tendered  
6 as a purported expert on geo-politics of oil. Now  
7 after the recess he is responding to questions  
8 entirely in the environmental area where he has no  
9 expertise shown or foundation laid.

10 THE COURT: I will permit it. Go ahead.

11 A I am not absolutely certain that I understood  
12 your question. Did you say you were referring to pipelines  
13 going from the Baltimore Canyon to the general area of say,  
14 Exxon refineries in Baytown?

15 Q Let me rephrase my question?

16 A I think it is Bayway.

17 Q Is the likelihood that the nonmajor oil  
18 companies, who acquired leases in the Baltimore Canyon, will  
19 build any pipelines?

20 A I think it is unlikely that they would. They  
21 would have to go in in a joint venture.

22 Q Is it more likely that the pipelines will be  
23 built by the majors?

24 A I think it is.

25 Q If the smaller companies do not build a



2

1

Rand-direct

2

pipeline and if the majors deny the smaller companies access to the majors' pipeline, how will the smaller companies transport their OCS production?

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A They'd have to use the same method that I referred to earlier, namely, producing from the field at that point into some sort of storage facility. The Phillips Company in the North Sea produces into a large tank -- a concrete structure over the field. They'd probably choose some remedy like that --

Q If the smaller companies are denied access to the refineries controlled by the majors in the New Jersey, New York, Philadelphia area, what is the likely destination of any oil produced by the small companies in the Baltimore Canyon area?

A Either they will exchange it or transport it someplace where they can use it.

Q By what means?

A By tanker of course. For example, if you had a refinery down in Texas, like Crown Central Petroleum, if they needed that crude they'd send it down. There are no oil pipelines of any kind going from New England down to the Gulf of Mexico area.

Q Are you aware of any FDC proceedings against the major oil companies with respect to exclusionary

Rand-direct

practices engaged in by the oil companies with respect to  
access to their pipelines and refineries?

A Vaguely, yes.

Q Do you know what the gravamen of the FDC's  
charge against the oil companies in regards to pipelines-  
refinery access is?

THE COURT: Sustained.

MR. BRUCE: Objection.

(continued next page)



3D 5pml

Rand-direct

1  
2 Q Did you find in the decision documents any  
3 analysis by the Secretary of the environmental consequences  
4 of the degree of concentration of ownership in the major  
5 oil companies of refinery capacity in the New Jersey-  
6 Philadelphia-New York port area and concentration of the  
7 ownership of pipeline facilities?

8 A No, not a word.

9 Q Am I correct that the major oil companies  
10 who control the bulk of refinery capacity in the New Jersey-  
11 New York port area are the members of Aramco?

12 A Well, Exxon is a member of Aramco and has  
13 refineries in the New Jersey area -- New York-New Jersey  
14 port area, and so is Standard Oil of California. I don't  
15 believe that Mobil and Texaco have facilities in here. I  
16 think they either have them in -- farther down the Atlantic  
17 seaboard or else they don't have them at all. But Exxon  
18 and Standard of California certainly do.

19 Q Do you know whether the major bidders at OCS  
20 Lease 40 are members of Aramco?

21 A Well, if Exxon is the major bidder -- and it  
22 is with 373 or so million out of 1 point billion -- yes,  
23 it's 30 percent owner. Or I would say about 29 percent  
24 owner of 40 percent of Aramco.

25 Q Who is Aramco?

1  
2 A ARAMCO is an acronym for the Arabian-American  
3 Oil Company which is now owned 60 percent by Saudi -- well,  
4 no. I have to elaborate on this.

5 The oil producing facilities of ARAMCO are  
6 owned 60 percent by Petromin, the Saudi state's oil companies,  
7 and the 40 percent by the four American companies: Mobil,  
8 Standard of California, Exxon and Texaco. However, the  
9 refinery, which is a very large refinery -- I think it is  
10 in the neighborhood of 600,000 barrels, or produces about  
11 600,000 barrels per day. Ownership of that facility and  
12 ownership of the Trans-American Arabian pipeline which goes  
13 from Saudi, and ownership of the pipeline facility going from  
14 New York is entirely in the four American owners of ARAMCO.

15 Q Finally, did you find any treatment in the  
16 decision documents as to the alternatives of Government  
17 exploration of OCS Sale 40 area?

18 A I found again that they were deficient in this  
19 subject. They had explored it but they had explored it  
20 imperfectly because they had refused to -- or failed to  
21 consider the option of partial Government exploration or the  
22 OCS. They only talked about Government monopoly of explora-  
23 tion. They refused to consider the possibility that the  
24 Government might take a certain percentage of the lease, or  
25 5 percent, 10 percent, 15 percent, or that it might take a



3

1

Rand-direct

2

minority or less than total equity position in some lease or leases.

3

4

Q What benefit would such a Government partial exploration be?

5

6

A Well, the argument that the PDOD's relied on was the document — lay in a document which was submitted in response to one of your interrogatories. It was a discussion of Government exploration of the OCS. And the argument they make, which is a well-taken argument, is that in any geological province of — or in many geological provinces there are going to be several wastes of exploration. That's quite probably. And it cites examples of this. In other words, with the refinement of geophysical and geological techniques, the development of drilling capacity and so on, you are going to drill much deeper. You are going to look for more subtle structures and so on and so forth in time. So, therefore, to consign a given area to a company which follows one given exploration strategy or philosophy and keep that company in — or Government in charge of that area or in control of that area, more or less in perpetuity, will not guarantee the fullest possible exploration of that area. The best thing to do is to have companies coming back and having different companies from time to time exploring the given area. And so somebody will come along with a new

17

18

19

20

21

22

23

24

25

Hand-direct

idea and find something out that hadn't been discovered before. And this paper quotes an example of this in the current -- in the Santa Inez area in Southern California, quite near Elk Hills. As a matter of fact, that's where Texaco came in and took a lease and drilled a little deeper than anybody else drilled and found a new and quite prolific zone.

Their argument was, if you let the Government take over all the drilling, you know, these different strategies are probable, or various strategies are not going to be pursued. You are going to have one system which may be applicable or fruitful in some circumstances, but not in other practices. However, it refused to consider the option which other country are considering, such as Canada, Norway, Iran, the United Kingdom of letting the Government in on some of the exploration because the Government -- for two reasons; one is that the Government can throw in a few ideas of its own. And the other is that the Government can find out what the real conditions -- exploration and operating conditions are in these areas. And it can have very valuable data and experience with which to measure the performance and claims of the other oil companies operating in this area.

Q In the prospects of exploration, is it possible to differentiate between gas and oil exploration in some

BEST COPY AVAILABLE



5

1

Rand-direct

2

3

4

fashion so that upon discovery of a possible gas find, you concentrate on getting the gas out and defer development of the oil.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A I have heard it, yes. There are areas in the United States which produce just gas. Now, one such area is the Sacramento Valley of California, which is in the northern half of the great central valley of California.

There are -- I don't think there is any such thing as an oil -- an oil producing well in the entire Sacramento Valley.

There may be a condensate well or a few condensate wells, being extremely fluid. It is well known in oil companies that you stay out of certain areas if you don't want to go for gas.

One geologist, formerly with Standard of California, by the name of Frizell, once told me that when he was at Standard of California and they contemplated leasing properties in the southwestern quadrant offshore of Louisiana -- I don't know or I don't remember whether it's the Players or Plizine area, but one of the two, and the geological staff at Standard of California recommended to their superiors that they not lease in this area. They said, we won't go in there because that's the gas.

Q Did you find any option of exploration in the decision documents separate or discreetly for gas as distinct

Rand-direct

1546

from oil and gas production?

A No, I didn't see any speculation about that.

Q Assuming that the Coastal Zone Management Plan is not completed until the year 1978, in your opinion, are there alternative sources domestically of oil and gas in sufficient quantity to meet the needs of the East?

MR. HYMAN: Objection.

MR. LIKE: Let me finish.

MR. HYMAN: I am sorry.

Q So as to permit a delay in actual development and production of oil and gas from the Sale 40 region until after 1978?

MR. HYMAN: Objection.

THE WITNESS: Do you mean are there —

THE COURT: Excuse me.

THE WITNESS: I'm sorry.

MR. HYMAN: Your Honor, for the first time the Coastal Zone Management provisions were incorporated into the question. The witness knows not one word of the Coastal Zone Management Plan. The witness does not know what the law means or what any ramifications of the Coastal Zone Management Plan are. And now the question is posed to an author on international oil. I think before that question is posed, I would like



7 1  
6a 2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Rand-direct

to have a voir dire, maybe counsel can qualify him as knowledgeable.

MR. LIKE: If I may be heard —

THE COURT: Overruled.

You may answer.

(continued next page)

Rand - direct - Like

1548

1  
2 THE WITNESS: Now, I am not exactly clear what  
3 you meant by the question. Did you mean there is a  
4 deficit in imports in the United States? Did you mean  
5 that it is my opinion that this deficit is not going  
6 to -- need not increase while provisions are made  
7 to determine whether to bring this area --

8 Q Now, my question is, are there alternatives  
9 domestically?

10 A Yes.

11 Q Which would for the period between now and  
12 let's say 1978, provide an equivalent amount of oil and gas?  
13 When I say equivalent, I mean equivalent to the production  
14 that is estimated to be derived from the sale 40 hearing?

15 A Yes. Sure. That's been the whole thrust of  
16 my testimony on domestic reserves. If you get Alaska on  
17 stream, it's going to be producing an absolute minimum of  
18 1.8 to 2 -- probably more than that -- I guess 250. Elk  
19 Hills is 400 thousand. Those areas could certainly more than  
20 make up for the Baltimore canyon, if the Baltimore canyon is  
21 going to produce, as they say, a total of .4 to 1.4 million.

22 Q Your opinion would be that it would be  
23 detrimental to the public interest if there were delay in  
24 development of production of the OCS sale 40 area until 1978  
25 until the completion of the coastal zone management plan?



1549

Rand - direct - Like

MR. BRUCE: I object not only to the question which is an inappropriate sense calls for speculation to what the public interest --

MR. LIKE: Well, the public interest has been defined throughout this proceeding as a sure and adequate supply of oil and gas.

MR. BRUCE: If Mr. Like wants to make the question specific, then he can do so by not having this witness speculate.

THE COURT: Sustained as to form.

Q In your opinion, if produced -- if development or production from the sale 40 area were delayed until some time during the year 1978 so as to permit completion of the coastal zone management plan in the state of New York and New Jersey, would it never-the-less -- or would it none the less be possible for the United States to obtain from other domestic sources an equivalent amount of oil and gas? When I say equivalent, I mean an amount of oil and gas which would might be produced from the OCS sale 40?

MR. HYMAN: That's a blind question. He's talking about two states where we have seen -- where it indicates that production won't come on until after 5 years after exploration. So there will be no oil and gas in the OCS coming in the first 2 years. Every

Rand - direct - Like

expert's testimony, every document we see --

MR. LIKE: I will extend it to --

MR. HYMAN: 5 years.

MR. LIKE: (Continuing) For a period of -- I'll  
that to a period of 5 years.

Q Take Mr. Hyman's concern into account.

MR. HYMAN: But, Your Honor, if he extends it  
to 5 years and these plans are due in one year or two  
years, the question doesn't make any sense.

THE COURT: You may answer.

THE WITNESS: I may answer?

THE COURT: Yes.

THE WITNESS: Yes, I think, as I have stated --  
you know, I have gone through all the other domestic  
sources which -- which I know about for which could  
definitely produce more than they are producing or  
produce -- and are not producing, and I think it's  
very obvious that those sources can produce the amount  
of oil that -- more than the amount of oil, you know,  
double or triple the amount of oil that the PDOD says  
is going to come out of the Baltimore canyon.

MR. LIKE: That completes my direct.

MR. KAUFMAN: I have no questions.

CROSS-EXAMINATION



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

sure, I will accept their judgement.

Q And the mandate of Congress?

A I don't think Congress arrived at that mandate with sufficient --

Q It was done unwisely?

A I think -- I would like to see more debate in Congress by definitely --

Q Now, Mr. Rand, you testified about friendly nations supplying all this nice oil that is out there to the United States, right?

A Well, I don't think I used the word, "friendly."

Q Well, I heard the words, "friendly nations," or nations that have some affinity, some love for us?

A No, I wouldn't use the word, "love."  
I'll say nations that are more closely allied with us. Perhaps more sympathetic to our national --

Q Would you consider --

MR. LIGHT: May I ask that Mr. Hyman observe the elementary courtesy of allowing Mr. Rand to finish his answer before going on to the next question?

MR. HYMAN: I apologize to the witness and to Mr. Light.

Q Are you finished?

A Sure.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q How about Canada? When I went to school, Mr. Rand, I was taught that between the United States and Canada they had not one fort, or one gun, or one castle, or one hostile in- an; that is an open border except for customs? Would you agree with that statement?

Well, I probably wasn't a child when you were a child, but --

Q I might be younger.

A I would say that certainly I was taught in history class in school that the border between Canada and the United States was pretty safe. I doubt that Frederick Lewis -- that fellow in California would agree with that.

Q In fact, in part of Canada they speak English?

A In many areas of Canada, yes, they do.

Q And these multination companies -- Ford would be a multination company, they produce cars in Canada and the United States and GM's in Canada and everything?

A Yes.

Q You would consider it a friendly country, wouldn't you?

A At present, yes.

Q And isn't it a fact, sir, that 16 percent of the oil imported into the United States to be used in the Eastern half of the country came from Canada via a pipeline?



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A And it's also a fact --

Q Will you answer the question?

A It is a fact, yes, up to this point.

Q Up to -- and is it a fact that this friendly nation of Canada cut us off to zero next year?

A Why?

Q No. Answer the question, sir.

A All right. I will answer the question.

Q Can we use that zero oil to heat our homes, this friendly nation?

A No. I guess we are going to have to go back to Saudi Arabia.

Q O.K. Thank you. So no matter how friendly a country is, you never know what the sources of supply is going to be even with a pipeline and international controls and cartels; is that correct?

A May I address myself to that?

Q Will you answer the question?

A I'd say that that question is phrased in such a way that I cannot give you a proper answer to it because it leaves several factors out.

Q Let's go to Mexico. That's a friendly country?

A Yes.

Q Very romantic country?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Yes.

Q South of the border and big hats and dancing, right?

A Yes. O.K.

Q Yet we have had our squabbles with Mexico? Zapata and all of the others? And the Mexican government isn't exactly politically -- well, they have sort of a socialistic type of government in Mexico over the years? Nationalization of various industries, right?

A You're talking about the regime back in 1938. But I wouldn't classify the current regime as socialistic.

Q Well, do you --

MR. LIKE: Your Honor, may I ask that he be allowed to finish. Mr. Hyman is cutting off the witness before he completes his answer.

THE COURT: You ask a question. Listen to the answer. I take it, you are asking questions to get answers and not for rhetorical effect.

MR. HYMAN: I get good answers, Judge. I will slow down.

(Continued.)



1555

Rand-cross/Hyman

SS#6/lpm  
fw

fg JB

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Now, I read recently-- You read the New York Times?

A Yes, I do.

Q I read recently in the New York Times that Mexico has decided to sell its oil at the OPEC prices.

A Yes.

Q Friendly country, right?

A Yes.

Q By the way, you know-- Do you know, sir--  
Would you agree with this statement, Mr. Rand:

"Imports of petroleum to the United States have been increasing because domestic" --

Would you agree with that statement, that imports to the United States have been increasing?

A Yes.

Q Would you agree with this:

"...because domestic production has not been able to keep up with the rising U.S. demands, the United States presently is importing over 35 percent of its oil requirements"?

A No, I wouldn't agree with that statement.

Q Would you agree that the United States is importing 35 percent of its oil that it uses?

A Yes.

Rand-cross/Hyman

Q In 1972 it might have been 33 percent or 30 percent or some percent?

A Yes.

Q Do you know what-- Does the PDOD discuss the balance of payments as a result of the embargo and the OPEC cartels?

A Again, in a deficient manner, yes.

Q Doesn't it say that the present balance of payments is reaching the area of 23 to 25 billion dollars a year as opposed to \$3 or \$4 billion a year back, in '76? Doesn't it say that?

A It does say that, yes.

Q Doesn't that money go--

A Wait a minute. It doesn't say that. I'm sorry. Could I amend my statement to modify that slightly?

Q Sure.

A It doesn't exactly say that.

Q What does it say?

A Well, it says-- It's phrased a lot more vaguely than that. It says something-- It says-- It says that even at this level, however, oil imports cost the U.S. \$25 billion a year. It says that.

Q That's money that, if I buy a gallon of gas, it comes out of my money -- I have to pay for it?



1557

Rand-cross/Hyman

1  
2 A Yes.

3 Q That money goes to the oil company. They  
4 take their profit; goes to the transport company, they  
5 take their profits; and then it goes to the producing  
6 nations; is that correct?

7 A The producing nation certainly gets a big  
8 slice.

9 Q Which is the foreign country?

10 A Yes.

11 Q If that oil or some oil was produced right  
12 here in the United States under OCS, isn't it true that  
13 with the royalty and the bonuses and everything else, that  
14 the difference, the percentage, in billions of dollars  
15 would go to the United States treasury?

16 A I don't believe that is true.

17 Q You mean OPEC controls the United States  
18 Treasury?

19 A No. The way I understand your question is you  
20 wanted me to state that all the difference of what would  
21 go to OPEC is instead going to the United States.

22 Q I didn't say that.

23 A I didn't understand then.

24 Q My question was for that oil that's produced  
25 under OCS, that percentage that's brought in and refined,

Rand-cross/Hyman

wouldn't that money go to the Treasury of the United States?

A What do you mean by "that money"?

Q The bonuses, the royalties, the taxes -- everything that's added onto the cost.

A Whatever little the Government would get out of it would go to the Government, yes.

Q Instead of-- You mean our Government would get less than what the OPEC countries get?

A Oh, yes.

Q Where did you read that?

A Well, that's the way I figure it out. I think any arithmetic analysis-- the tax rate in any OPEC country is 85 percent of the posted price, which is above the world market price. On top of that, they have a 20 percent royalty. If I'm not mistaken, in the United States the royalty is 16-2/3 percent, which is already below the royalty level by more than 33 percent of OPEC.

On top of that the corporate tax rate is, I believe, a maximum of 48 percent on net income, whereas in Saudi Arabia and in other OPEC countries, the tax rate is 85 percent of the posted price less production costs, less the royalty, which is a very far cry--

Q What about the \$1.4 billion these oil companies gave to the Government before they did anything? Don't you add



1  
2 that into the cost of production?

3 A (No response.)

4 Q Or--

5 A I don't add the whole sum into the cost of  
6 production. Besides, it's my understanding it's \$1.1 billion  
7 for the offshore leases in Baltimore Canyon.

8 Q I'm off by what? A couple of billion. That's  
9 not much, nothing much.

10 A In any case, as I pointed out in my affidavit,  
11 especially in my update of the affidavit, owing to the  
12 mechanism by which companies calculate their cash flow, if  
13 they pay, say, \$100,000,000 in bonuses, they're going  
14 to actually end up putting out much less than that in cash.  
15 I can't remember what the exact sum was. Maybe it was 108  
16 or \$120 million or something like that.

17 If they put up \$1.1 billion, they put out  
18 of their pocket into somebody else's hand something in the  
19 neighborhood of \$600 million.

20 The main reason for this, they were able to  
21 reduce their dividend by reducing their net income, and  
22 don't forget that dividends are a cost to a corporation,  
23 and that is carried, for example, in a document, Standard  
24 Oil Company of California document, which the Subcommittee  
25 on Multinational Corporations, published in its Volume VIII

Rand-cross/Hyman

of its study on World Oil Industry. I brought a copy of it here. If I find the copy, I'll even be able to give you the exact page in which Standard Oil of California discusses its cash flow; the components of its cash flow, and in that list gives dividends as a negative component of cash flow.

I don't know if you're willing to bear with me while I find this document. It's in here somewhere. That explains, I think, to a great extent, or perhaps more than anything else, why the companies pay bonuses of X hundred million, actually incur a cash flow or cash outflow of X minus Y hundred millions of dollars. I brought it here, stashed in this volume of material.

I don't insist on finding it, but I will state for the record it was in Volume VIII of the report by the Subcommittee on Multinational Corporations, and it was part of Standard Oil Company of California's forecast and operating summary data of November 1972, of which the Church subcommittee received a copy.

Q By the way, do you know if Arabian oil is brought into this country in a refined capacity or crude?

A I know it's brought in in crude capacity. I suspect -- I don't know, but I would -- it's certainly possible Iranco Parent would refine it. I see no evidence



Rand-cross/Hyman

of it.

Q Do you know if the OPEC countries ever used oil as a political weapon prior to today?

A I think I've gone to great length both in my book and affidavit--

Q I didn't read your book or affidavit. Answer the question, please.

A I'm stating that the impression which the Iranco Parent, for example, sought to give the United States Government and which the United States Government also sought to convey, was that the Saudis were extremely intent on cutting back their production of oil to penalize the United States for its support of Israel, to put pressure on the United States to get Israel to evacuate from the West Bank, the old City of Jerusalem, the Gaza Strip. That's what has been stated on one level.

On another level, again, the Church subcommittee again proves in Volume VII that there were very serious production problems from the Ghawara oil fields. Some of them were going to gas in 1973, because they were upping production at an excessively fast rate.

When you up production, you have to maintain pressure, the oil will go to gas and the way you do that is inject one and a half times as much water into the field as

1  
2 you take out of the field, and although Iranco had been  
3 doing that, what they call dump flooding, for some time in  
4 the Ghawara field, the rate they were dump flooding fell  
5 back because a lot of their equipment began to break down  
6 and other reasons, a lot of sand was coming up.

7           They had to produce faster from the water  
8 zones under the oil zones. Sand came up, with the result --  
9 this is stated -- this is a cable by C.J. Headland(ph) of  
10 Iranco -- sorry, of Exxon, to other parents. I don't  
11 happen to have that page.

12           It's quoted that he stated it was his under-  
13 standing that in any case the amount of crude that was  
14 going to be available for export from Saudi Arabia beginning  
15 in October of 1973 was going to be drastically reduced from  
16 the September level, and that it was his understanding that  
17 this reduced rate was going to have to be continued for  
18 another year or so while they got production up.

19           Q       This was all -- they fooled the whole world,  
20 used it as a political weapon, but they didn't have the oil  
21 anyway because the machinery broke down?

22           A       They could not have sustained a rate of 9.2  
23 million barrels a day, at least in the months of October  
24 through December of 1973, perhaps for another nine months  
25 after that, and that the world was led to believe it was



1  
2 because the United States wasn't forcing Israel to pull  
3 out of the Old City of Jerusalem that production wasn't  
4 coming up.

5           There is very strong evidence which shows or  
6 leads one to really strongly suspect at the very least the  
7 real reason that Saudi Arabia cut back in October was be-  
8 cause the Ghawara field was being ruined.

9           Q       That's the reason they treated the Nether-  
10 lands in the same manner, announced to the world, oil for  
11 Germany and France and England, they wouldn't let them freeze,  
12 but the Netherlands not a bit of Arab oil would go to the  
13 Netherlands because they were pro-Israeli. That's another  
14 thing they said.

15           A       There's another factor here which I should  
16 mention at this point. That is, and I've mentioned this  
17 again in my affidavit, Saudi Arabia, as several other  
18 Arabian oil supporting states, are under considerable  
19 pressure from more militant Arab states in the region, to  
20 adopt a more hostile attitude towards the West than they  
21 want.

22                   Naturally they're going to explain a drop in  
23 production as a result of their frustration with the American,  
24 Dutch, or West German policies, not as a result of the fact  
25 that the oil in certain parts of the Ghawara field had

1 reached the bubble point.

2 Can you imagine that Saudi Arabian government  
3 getting up and telling the Iraqi ambassador, "Look, we  
4 think the United States ought to withdraw. We don't mind  
5 what the United States does in Palestine" --

6 Q You mean Israel?

7 A Or Israel. There are parts of Israel which  
8 Israel will probably withdraw from. I think--

9 Q Mr. Rand, I don't know what this is or it's  
10 something that you wrote. It's entitled, "Critique of the  
11 U.S. Interior Department's Programmatic" --

12 A That's right.

13 Q You say, on page 20 -- have you got a copy  
14 of this?

15 A I'm not so sure I've got a copy right here.  
16 I probably don't.

17 (Copy handed to the witness by Mr. Like.)

18 A Yes, I've got it.

19 Q You say in that document of which you are the  
20 author, that OCS development plans, admits that once the  
21 decision is made to develop OCS lands the states cannot stop  
22 it. It goes on to say that granting a stay or right of way  
23 to review developed plants can never result in a denial of  
24 development rights.  
25



1565

Rand-cross/Hyman

Then you say, the document says that even the contention that states can hold up development, page 29 and 30, is that in the PDOD there's a contention that states can hold up development.

A I'm sorry, that must be a typographical error. I must have said, given the contention -- no, I take that back. What I meant was--

Q Delayed development.

A That's what I meant. If I said holdup, that's what I meant.

Q Does that mean PDOD there's a recognition of the rights of the states to delay development; that's in the PDOD?

A The earlier sentence says--

Q Sir--

A They may have a chance to comment. That gives them the right to delay it to some extent. As a matter of right, Skag Southern California suit, in the Department of Interior, went into a lengthy statement on that subject, which I carried in my affidavit on pages -- there will be a hiatus while I look for the exact reference.

MR. BREWSTER: Before he finds this, I object to his reading a complaint filed in another litigation.

1  
2 Q It's your testimony the PDOD, in any event,  
3 recognizes the power in the state to hold up development.

4 A For very short periods of time, yes.

5 MR. HYMAN: No further questions.

6 MR. LAFITTE: Might we have just a second?

7 (Pause)

8 MR. LAFITTE: We have no cross-examination.

9 MR. LIKE: I have some redirect.

10 THE COURT: Surely.

11 REDIRECT EXAMINATION

12 BY MR. LIKE:

13 Q In your affidavit, you make a reference to  
14 the OPEC nations and the major oil companies who have  
15 exclusive market sharing arrangements acting in such a way  
16 as to maintain high oil prices.

17 You describe their relationship as that of  
18 a bilateral oligopoly. Would you explain what you mean by  
19 that?

20 A I went into that a little bit earlier.  
21 It's true-- I think it could be stated that OPEC is an  
22 oligopoly of sorts. You have several countries, thirteen  
23 of them, let's say, exporting the overwhelming majority of  
24 the oil that passes back and forth in international commerce.

25 It's pretty apparent that this organization by



## Hand-REDIRECT

1  
2 itself could not sustain the high price. There is another  
3 oligopoly, that is the seven major oil companies which have  
4 control over the disposition of 70 to 76 percent of the oil  
5 moving in international channels once it leaves the support  
6 terminals of these various countries as a second oligopoly.

7 These operate in conjunction with one  
8 another. It's an oligopoly with two sides, two civil war  
9 muskets, propping each other up.

10 Q The phrase is used, the majors are the instru-  
11 ment of allocation and prorating of the OPEC--

12 MR. HYMAN: That's improper redirect.

13 I didn't cover any of this oligopoly,  
14 monopoly, or any of this other stuff. He had a  
15 chance to do this on direct.

16 MR. LIKE: Your Honor, Mr. Hyman got into the  
17 high prices, and he got into the question of who  
18 gets the money and how it gets passed through--

19 THE COURT: I don't think it's necessary.  
20 I think we have very clearly a witness and his  
21 conclusion.

22 MR. LIKE: Might I conclude with several  
23 questions which are prompted by the cross-examination?

24 THE COURT: Yes.

25 Q Did you find anything in the decision documents

## Rand-redirect

1  
2 by way of an evaluation by the Secretary of the option  
3 of taking actions to bring oil prices down and the feasi-  
4 bility of bringing oil prices down?

5 A No, I didn't. I saw it was barren on that  
6 subject.

7 Q Did you find any discussion by the Secretary  
8 of the option of retaining the OCS sale for the area as a  
9 strategic reserve for later development rather than for  
10 immediate production and development?

11 A No, I don't believe I did.

12 Q Are there any advantages to that course of  
13 action that you find based upon your experience and re-  
14 search?

15 MR. BREWSTER: Isn't this the same kind of  
16 objection, outside the scope of the cross?

17 THE COURT: I think you're extending the  
18 testimony.

19 MR. LIKE: I don't have much to go. I'll  
20 wind it down.

21 THE COURT: All right, one or two more ques-  
22 tions. Go ahead.

23 Q Your answer to that, please.

24 A Would you repeat the question.

25 Q (Pending question read.) '



1569

Rand-redirect

1  
2 A Yes, I certainly think it's an option that  
3 ought to be very carefully weighed. I didn't see it weighed  
4 in the PDOD or the FES, the EIS, either of them.

5 Q You were cut off by Mr. Hyman when you  
6 attempted to say something on further explanation of your  
7 answer with respect to the Canada situation and the Mexico  
8 situation. Would you care now to complete the answer.

9 A Yes. I think I would like to make a fuller  
10 statement on the question of friendly nations, also at one  
11 point I agreed with Mr. Hyman that Mexico was a friendly  
12 country.

13 I had earlier eschewed the use of the word  
14 "friendly." I would say I did not mean that I consider  
15 Mexico a "friendly" country, but I think that the problem  
16 that any prudent policymaker is going to be faced with is that  
17 any given time in any commodity where you have ten, fifteen,  
18 twenty countries supplying the United States, at any given  
19 point in time some are going to be hostile. At any rate,  
20 some are going to be more hostile than others.

21 On the other hand, I think there is real reason  
22 to doubt their hostility, their political hostility is going  
23 to be a cause for them to shut off oil. I think that even  
24 the history of the '73-'74 oil embargo shows this.

25 The reason that Canada cut off its oil exports

Rand-redirect

1  
2 to the United States is because Canada wanted to save  
3 foreign currency; in other words, it cut off the oil to the  
4 United States so it would be able to import less from  
5 Venezuela, for which it was paying the OPEC price.

6 Sure, our relations with Canada are still  
7 most amicable. You can't deny that.

8 Q What evidence in the year '73-'74, there was  
9 not in fact a cut-down of oil coming to the United States?

10 A I don't think you can deny there was some  
11 cutback in oil coming to the United States, but, again,  
12 I think there is reason to question whether or not this  
13 was the result of an embargo, whether it was the result of  
14 conservation measures taken in Saudi Arabia. It turned  
15 out that some discussions between Frank Unger as the presi-  
16 dent of Iranco and Sheik Yamani, there were discussions,  
17 or, let's say there were records of discussions which Unger  
18 Telexed to Iranco's office, of which the Church subcommittee  
19 got copies and published them.

20 These pretty well indicate that Yamani's main  
21 concern was not political, was not economic in wanting  
22 Iranco to cut back in the mid or late 1973. Unger admitted  
23 in one such conversation that Yamani was on stronger ground  
24 on the conservation issues than the political or economic  
25 issues.



Rand-redirect

1571

MR. LIKE: That concludes, your Honor.

I would like to offer in evidence--

THE COURT: Thank you very much, sir.

MR. LIKE: I would like to offer in evidence  
the Critique--

THE COURT: You needn't stay, MR. Rand.

MR. LIKE: Exhibit 84 was Mr. Rand's Critique  
of the programmatic PDOD. I sent that document to  
the Secretary before the final environmental statement  
Sale 40 was issued and asked him to take note of that.

I believe that is admissible in evidence under  
those cases which require that the decisionmaker take  
into account dissenting views with respect to proposed  
action.

I cited that line of cases in my brief. I re-  
offer it in evidence for the purpose of showing that  
the Secretary was put on notice as to dissenting views,  
which he did not ultimately take into his account  
in the decision documents.

MR. HYMAN: On that point, the fact that  
Mr. Like sent it, comment on the PDOD on the program-  
matic was a year after the decision was made on the  
programmatic. If you remember, there were two PDOD's,  
one on the programmatic, one on the file.

1572

1  
2 This comment is on the programmatic, sent to  
3 the Government a year after the decision was made  
4 to accelerate. If, just because you put a 13-cent  
5 stamp on something, put it in the mails, do a use-  
6 less act because it in no way could be considered.

7 The decision was made a year before that.  
8 I don't see how that makes it admissible.

9 MR. LIKE: On the alternative issues, the  
10 Secretary was bound when he decided on lease sale 40--

11 THE COURT: All right. Mark it in evidence,  
12 84 in evidence.

13 MR. LIKE: Thank you.

14 THE COURT: Any further witnesses?

15 MR. KAUFMAN: NRDC has no further witnesses.

16 THE COURT: I'll hear from the defense witness.

17 MR. JENSEN: At this time we call to the  
18 stand Mr. Theodore Haintz.

19  
20 H. THEODORE HEINTZ, JR., called as a  
21 witness in behalf of the defense, having been duly  
22 sworn by the Clerk of the Court, testified as follows:

23 THE CLERK: Full name?

24 THE WITNESS: H. Theodore Haintz, Jr.,

25 H-e-i-n-t-



Heintz-direct/Jensen

3 1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A The objective was to encourage the states and assist the states in developing effective means of managing coastal zone resources, to provide the means for the Federal agencies to participate in that process, and to provide for coordination between a wide variety of Governmental organizations at the Federal, state, regional and local level, in the development and implementation of Coastal Zone Management programs.

Q Could you describe some of the key features of the Coastal Zone Management Act?

A Yes, I would describe I think four key features:

The first is the program development activity in which the states are eligible -- coastal states are eligible to receive financial assistance for a period of up to four year to support their activities in developing management programs under the Coastal Zone Management Act.

Q What section of the Act would set forth that?

A That is set forth under Section 305.

Q This would be efforts in planning leading up to the developing of the Coastal Zone Management Act?

A Yes.

Q Is this activity Federally funded under the Act?

1  
2 A Yes, it is.

3 Q Continue with your answer.

4 A A second feature of the Coastal Zone Management  
5 Act is set up under Section 306, which gives additional  
6 financial assistance in the form of grants to coastal  
7 states who are developing management programs and have been  
8 Federally approved by the Secretary of Commerce.

9 During the 306 -- under 306 funding management  
10 programs which had been given Federal approval are implemented  
11 and the Federal assistance is used to support the implement-  
12 ing activities, the staffing and the information gathering,  
13 and so forth required to implement the management program.

14 Q Are there any other significant features of  
15 this Act?

16 A Yes.

17 In addition at the time the Federal -- a state  
18 management program is given Federal approval, Section 307,  
19 commonly referred to as the consistency provision, is  
20 activated. Under Section 307 a variety of different types  
21 of Federal activities are to be managed or conducted in a  
22 way that makes them consistent with the Federally approved  
23 management program of the state.

24 Q Is there a requirement under the statute  
25 concerning a coastal energy impact program?



1575

A Yes.

Section 308 was added to the Coastal Zone Management Act by the Amendment of 1976. It provides a coastal energy impact program for which one point two billion dollars is authorized. This program provided Federal assistance for planning for ameliorating the impact of energy development which effects the coastal zone.

Q Does this funding also become available after the implementation of the Coastal Zone Management Plan?

A During the 305 phase and the 306 phase and under some circumstances even if a state is not either 305 or 306.

Q Does the Act set forth any requirements as to what must go into a Coastal Zone Management program?

A Yes.

The Act sets forth a number of requirements, including such things as the state's definition of the boundaries of its coastal zone, in accordance with the definition provided in the Act. This is actually a drawing of the geographical boundaries. The state is to identify areas of particular concern in its management program. These are ecologically sensitive or unusually valuable areas. The state is to define permissible uses of the land and water in the coastal zone. The State is to set up planning

1 Q To simplify that a moment, isn't it the purpose  
2 or is it the purpose of the Act to minimize the impact on  
3 those states or localities who are forced to bear the brunt  
4 of OCS development?  
5

6 A Yes.

7 Q Are you familiar with the amount of funding  
8 that is currently being received by the mid-Atlantic states?

9 A Yes, under 305.

10 Q Could you tell us what amounts of money are  
11 being received by the various states under the Coastal  
12 Management Act?

13 A Delaware has had funding under Section 305  
14 for two years. In the first year they received one hundred  
15 and sixty-six thousand six hundred and sixty-six dollars.  
16 In the second year two hundred and forty-five thousand  
17 dollars of Federal funds. Those funds by the way are  
18 matched by state's funds, two-thirds Federal, one-third  
19 state, although that was amended last July to eighty  
20 percent, twenty percent matching.

21 In addition to the normal 305 program development  
22 grants, three million dollars has been appropriated specific-  
23 ally for OCS impact planning; of that three million Delaware  
24 received one hundred thousand dollars.

25 Q What are the figures for the State of



1577

Heintz-direct/Jensen

New Jersey?

A For New Jersey -- New Jarsey has received funds for development of its management program for three years. In the first year two hundred and seventy-five thousand. In the second year four hundred and seventy thousand seven hundred and fifty dollars. In the third year six hundred and ninety thousand three hundred and thirty-seven dollars, and in addition from the OCS impact monies, three hundred and thirty-seven thousand.

---

(Continued on next page.)

Haintz - direct - Jensen 1578

Q And finally, what are the figures for the state of New York?

A New York has been receiving monies under section 305 for 2 years. In the first year, 550,000. In the second year, 779,666. And from the OCS impact monies, 375,000.

Q Are you familiar with the status of the Coastal Zone Management Plan specifically in New Jersey and New York?

A Yes. In a general sort of way.

Q Well, could you describe for us generally what the status of the planning effort is in New Jersey?

A Yes. In the New Jersey the program has been developed now for three years gathering the basic information involving inventory of coastal zone resources of the uses of which could be made of those -- of those resources including various Federal activities. New Jersey of course had CAPRA, which is the coastal area facilities act which establishes state permitting for certain types of facilities in coastal areas. And that is a part of their program development. They, as I understand, will be seeking some additional legislation for the authorities necessary for their management program this year and could be submitting management programs for Federal review late in 1977.

Q How long approximately would you estimate the



review to take after submission of the plan?

A The Federal review normally takes about 8 months.

Q And is this based upon experience with other localities?

A Yes. There has been reviews completed for the state of Washington which now has an improved management program, and also nearly completed for segments of two other state programs. The Island of Calibria off of Puerto Rico and the area of San Francisco bay, which are nearing the final Federal approval.

Q And what is the status generally of the Coastal Zone Management Plan in New York and particularly the segment that relates to Long Island, Nassau and Suffolk county?

A In general, New York as a whole is not as far along, having only two years as opposed to three under the New Jersey program development. Although the segment there, they have segmented as other states have done which would allow them to move ahead for the Long Island area and possibly have that management program ready for submission in '78.

Q And how long will --

THE COURT: Now, I didn't quite follow. Are they going to submit it in '78? When do you expect

1 completion of your review?

2  
3 THE WITNESS: Well, the normal review process  
4 takes about 8 months. Of that -- that includes the  
5 two Federal periods and the period in which the  
6 state makes independent revisions.

7 THE COURT: What month do you expect it will  
8 be fully operational?

9 THE WITNESS: I am afraid on the information  
10 we have available it would be difficult to peg a  
11 single month.

12 THE COURT: Would it be early '79, late '79?  
13 When?

14 THE WITNESS: Well, if the plan were submitted  
15 in early '78, then an approval could be done. If the  
16 program met the requirements within the year. If it  
17 were submitted--If it were submitted late in '78, then  
18 the approval would come some time in '79, early '79.

19 THE COURT: Well, as it stands now, it will  
20 be 1979 probably?

21 THE WITNESS: That seems to be correct.

22 THE COURT: What about New Jersey?

23 THE WITNESS: New Jersey could have an approved  
24 program in 1978. Could have.

25 THE COURT: Late '78?



Heintz - direct - Jensen

1581

1 THE WITNESS: Yes, I would say.

2 THE COURT: All right.

3 Q How do you anticipate specifically these two  
4 coastal zone management plans affecting resale number 40  
5 and the activities that might be associated?  
6

7 MR. KAUFMAN: I object to the witness answering.  
8 I don't think the witness is entitled to answer. How  
9 can he anticipate this as happening until he sees the  
10 state plan?

11 THE COURT: Overruled.

12 THE WITNESS: The management programs when  
13 approved will have in effect primarily upon the  
14 development phase of the OCS activity. This is the --  
15 this is the phase in which production facilities and  
16 transportation facilities are put in place, and  
17 production is actually begun. It is also the phase  
18 in which the impacts are of greatest concern. And  
19 that means that there are schedules that -- we have  
20 discussed the schedules for both of the states of New  
21 Jersey and the state of New York that -- or at least  
22 for the Long Island segment for the state of New York  
23 that the Federal consistency provision will be in effect  
24 during the development phase for sale -- for leases  
25 under sale 40. In particular, any activities which are

1 under Federal permit and in effect the coastal zone  
2 of New York will fall under the provisions -- consistency  
3 provisions of section 30723.  
4

5 Q Is this testimony which you just gave based  
6 upon an assumption as to when development might begin for  
7 the tracts in sale 40?

8 A Yes, it is.

9 Q What is that assumption -- the basis for that  
10 assumption?

11 A The basis for that assumption is that the  
12 exploration phase can take from two or three years, and  
13 the development follows after that, and may take another  
14 two years. So that production is actually four or five  
15 years, maybe more, than that from the time of the lease  
16 sale.

17 MR. KAUFMAN: Your Honor, I object and move to  
18 strike this witnesses testimony. This witness isn't  
19 qualified at all as to state when it could be. You  
20 know, how long the development program can take or  
21 would take, or whether or not it might also take 18  
22 months.

23 THE COURT: No, I will permit it. He probably  
24 knows what is booted about in the office.

25 Q Are you familiar with the time frame, for



1583

Heintz - direct - Jensen

example in lease sales in other areas in the United States?

A Yes. I have participated in a number of activities in my responsibilities at the Department of the Interior having to do with OCS development and I have become familiar with the general pattern of exploration and development and the times it wished those to occur after the sale of the leases.

MR. KAUFMAN: Objection, your Honor. The witness testified a few minutes ago that he only took this job last July after the Impact Statement was there. All this testimony as to what he might have been familiar with since that time is outside the scope of what this trial is about.

THE COURT: Overruled.

Q Have you worked with the Department of Interior in another capacity before this job?

A I worked with the Department in March, 1975 before I began the job that has specific reference to coastal zone management. IN the very beginning I was involved in OCS issues.

Q So to reiterate your judgement on the time frame here is based in part at least on what Interior experience has been in other lease sales?

A That's correct.

1 Q To your knowledge, has any actual exploration  
2 activities commenced for sale 40?

3 A Not to my knowledge.

4 MR. JENSEN: I have no further questions.

5 MR. KAUFMAN: May I have a minute?

6 MR. BRUCE: I have no questions, your Honor.

7 THE COURT: All right, any cross?

8 MR. KAUFMAN: Can I have a couple of moments,  
9 your Honor, and then I will --

10 THE COURT: All right. May I have the pull-  
11 out map? The final statement. I don't have any of  
12 the documents. Maps.

13 MR. KAUFMAN: The big ones?

14 THE COURT: Volume 4.

15 MR. KAUFMAN: I know they were in -- they may  
16 be in the box in the back there.

17 MR. HYMAN: Volume 4 of 4, your Honor. I don't  
18 know if they are all here.

19 THE COURT: All right, go ahead.

20 CROSS-EXAMINATION

21 BY MR. KAUFMAN:

22 Q Mr. Heintz, how much does the Department  
23 receive in bid money from the companies submitting --

24 MR. JENSEN: Objection. This is way outside the  
25



Heintz - cross - Kaufman

scops. He hasn't testified about sales.

THE COURT: As long as we have him here, I will permit it.

THE WITNESS: As I recall, it was in the order of 1.1 million dollars.

Q Now, will you add up all of the money that has been given to these three mid-Atlantic states that you testified to just a few minutes ago?

A Will I add it up?

Q Yes, would you add it up?

MR. HYMAN: Your Honor, I object to the question. It's improper. He is not here as a mathematician or his ability to add large numbers. I asked the same question of their witness and they wouldn't. There was an objection. Mitchell couldn't add 550 and 30. And we are asking this witness to go into the millions.

THE COURT: Well, a billion two plus the amounts that were used in the planning, as I recall.

MR. KAUFMAN: Billion two was the bid.

THE COURT: No. It was eight hundred million plus 400 million. Is that right?

MR. KAUFMAN: What I am asking now --

THE COURT: That's nationwide.

MR. KAUFMAN: What I got is the number that's been

1 allocated -- so far to the New Jersey-New York and  
2 Delaware -- something under 4 million dollars.

3  
4 THE COURT: That's just for planning.

5 MR. KAUFMAN: Yes sir. That's what I wanted to  
6 find out.

7 Q So far, how much has been paid to those three --

8 THE COURT: You can add it up. It's the order  
9 of a few million dollars.

10 Q Can you give me that number? Can you add it up?

11 A Yes, I most certainly can.

12 Q Will you add it up?

13 A Yes.

14 MR. HYMAN: The Court hasn't ruled on the  
15 Government's objection to the question, your Honor.

16 THE COURT: Overruled.

17 MR. HYMAN: Thank you.

18 (Continued.)  
19  
20  
21  
22  
23  
24  
25



1587

A VOICE: These were produced after.

THE COURT: Two things I want. I want the total area from which he chose. And the number put out is on these charts. And then the third and small -- less numbers, those that were bid on and the bids were accepted.

MR. HYMAN: Can you have it tomorrow?

We will try to.

THE COURT: There is a duplicate of this in your volume four. You can put it right on this. We can mark it.

MR. HYMAN: They have copies.

THE COURT: You will have to use some kind of cross hatching or -- cross hatching or some color scheme so that they will all be on the same map. It won't be difficult.

Q What is the number that you got?

A The number that I got is funds disbursed up to this point, three million nine hundred seventy-eight thousand four hundred and nineteen dollars.

Q Now, New Jersey, for example, you said got about a little over a million seven so far?

A Yes.

Q Under both plans.

1  
2 relationships and the legal and regulatory authori-  
3 ties and the procedures for making decisions about  
4 future uses of the coastal zone, but it is not a plan  
5 in the way that we have thought of master plans or  
6 land use plans.

7 THE COURT: You must have some notion how  
8 it's going. You've been working on it for a  
9 number of years and spent a couple of million dollars.

10 THE WITNESS: Yes, that's right.

11 THE COURT: I'm holding up from Volume IV,  
12 Visual No. 1, showing recreation and open space  
13 resources, potential hazards.

14 I suppose eventually you're going to have  
15 a plan that looks something like this, which shows  
16 in different colors what can be done, where industrial,  
17 where you have beaches, things like that, is that what  
18 you look for in addition to various backup documents?

19 THE WITNESS: I would prefer not to use the  
20 term "plan," because there are a variety of inven-  
21 tories of existing resources and existing uses.

22 THE COURT: I mean program.

23 THE WITNESS: The program itself does not con-  
24 tain a plan for the future which lays out as a land  
25 use plan, does zoning patterns that are acceptable--



1589

Heintz-cross/Kaufman

that sort of thing?

THE COURT: Wouldn't you say, with respect to the Cape May-Atlantic area our program is to encourage tourism and discourage industrial development?

THE WITNESS: Or to put certain kinds of conditions on development, right.

THE COURT: So you end up with something like this or something like that land use plan which is on the board which is the master plan for Suffolk-Nassau?

THE WITNESS: I would--

THE COURT: The program for development.

THE WITNESS: I would not anticipate it would be that detailed, but something like that.

THE COURT: Generally?

THE WITNESS: Yes.

THE COURT: Looking at the map, supposing you visualize, which is not beyond the realm of possibility in view of the type of testimony we have that they come up with, a program for developing this entire coastal area, running from Sandy Hook around Cape May to Cumberland County and the south shore of Staten Island, which now has beaches on it-- not very good at the moment, because of pollution, but

Heintz-cross/Kaufman

1  
2 apparently that's been cleaned up somewhat--  
3 and then this other beach area running from the  
4 docks in Kings Point around what used to be called  
5 Gravesend Bay.

6 THE WITNESS: That's correct.

7 THE COURT: Is it still Gravesend Bay?

8 THE WITNESS: Yes.

9 THE COURT: Are you from Brooklyn?

10 THE WITNESS: No, I have sailed there.

11 THE COURT: And through the South Shore, and  
12 say that all should be beach and recreation and that  
13 the only place we're going to permit pipelines to  
14 come in is around Sandy Hook and through Raritan Bay  
15 into the Perth Amboy section. That's our program.  
16 We want to develop the Perth Amboy section for that  
17 kind of oil based industry and so on. That's con-  
18 ceivable, isn't it, that they would come up with  
19 that kind of program?

20 THE WITNESS: Yes, that's conceivable.

21 THE COURT: Did the Department of Interior  
22 consider that in deciding that maybe we ought not  
23 to lease what's shown here in purple, but we ought  
24 to lease a little bit to the north of that, so we  
25 could run pipelines more conveniently, rather than



Heintz-cross/Kaufman

1  
2 have it further away so that it's closer to Atlantic  
3 County where we don't want pipelines?

4 THE WITNESS: I don't know that specific  
5 geographical designations or specific pipeline routes  
6 were considered.

7 THE COURT: Certainly it would be, if it  
8 could have been done, if the time sequence permitted,  
9 it would have been certainly more logical, wouldn't  
10 it, to first develop the program and then make the  
11 individual decision as to where to locate the leases  
12 and have the products, wouldn't it?

13 THE WITNESS: (No response.)

14 THE COURT: If you were just not pressed  
15 by all these problems presently.

16 THE WITNESS: Yes, I would answer the question  
17 this way: that if we could afford, and I use the word  
18 in an economic term -- to be leisurely about the  
19 development of oil resources, or any other resource,  
20 for that matter, then in fact the logic of doing all  
21 the planning first and all the development second  
22 would always prevail.

23 Unfortunately, the economics of the situation  
24 is that we could almost never afford to wait until  
25 planning is completed, but we always move forward

1  
2 concurrently of doing some planning as we go, that  
3 sort of situation.

4 THE COURT: All right.

5 Q You would agree, Mr. Heintz, that particular  
6 alternative the Judge is talking about is not considered  
7 in the impact statement; is that correct?

8 A I don't know.

9 MR. JENSEN: Objection.

10 Q Have you read the impact statement?

11 A Not completely, no.

12 MR. KAUFMAN: I have no further questions.

13 CROSS EXAMINATION

14 BY MR. LIKE:

15 Q Are you familiar with the OTA report which is  
16 marked Plaintiff's Exhibit T-201 in evidence?

17 A I'm familiar with the study from which that  
18 report came. I'm familiar with draft reports. I have not  
19 reviewed that document in detail.

20 Q Would you agree with this statement on page  
21 43—

22 MR. JENSEN: Objection. This witness is not  
23 offered or qualified as an expert in any of these  
24 matters.

25 THE COURT: Do you have any expertise in



1  
2 these matters?

3 THE WITNESS: Which matters, sir?

4 MR. LIKE: Let me ask the question. It follows  
5 on questions you asked.

6 THE COURT: If you feel that you're not quali-  
7 fied to answer the question that's asked, just say so.

8 You may ask it.

9 MR. LIKE: Thank you.

10 Q "There is no top level coordination of OCS  
11 management practices and studies initiated by the Department  
12 of the Interior. Line responsibilities for OCS activi-  
13 ties are divided within the Department of Interior between  
14 two of its bureaus, both of which have a wide range of  
15 other activities that overshadow their OCS responsibility."

16 Is that a true statement?

17 MR. BREWSTER: I object to that. That  
18 doesn't say anything about the Coastal Zone Management  
19 Planning. It's a very broad, general statement.

20 THE COURT: If you feel you can't answer it,  
21 say so.

22 THE WITNESS: I can't answer that.

23 Q Next question. Do you agree with this state-  
24 ment: "Clear lines of responsibility have not been established  
25 between the Department of Interior and the Office of Coastal

1  
2 Zone Management despite the fact that offshore development  
3 in the mid-Atlantic would produce the most important impact  
4 on coastal zones since the Coastal Zone Management Act  
5 became law."

6 A I think I can respond to that and I agree.

7 Q What lines of responsibility can you describe  
8 that have been established between the Department of Interior  
9 and the Office of Coastal Zone Management?

10 A The Assistant Secretary for Program Develop-  
11 ment and Budget is responsible as the chief liaison officer  
12 between the Department and the Office of Coastal Zone  
13 Management, reporting to him, the Director of the Office  
14 of Policy Analysis and my staff have the responsibility  
15 for coordinating the department's activities for day-to-day  
16 liaison with the staff of the office of the Coastal Zone  
17 Management in the development of regulations and policies  
18 affecting the coastal zone management program and the  
19 Department's activities, and we also have responsibility  
20 for coordinating the participation of the various bureaus  
21 and offices of the Department in the development...  
22 state management programs.

23 Q When was this coordination established?

24 A I believe it was established in mid-1975.

25 Q Before the lease sale took place -- Withdrawn.



1595

Heintz-cross/Like

Q Before the Secretary issued his final environmental statement in 1976, according to your testimony, there was a clear line of responsibility that had been established between the Department of the Interior and the Office of Coastal Zone Management?

A Yes.

Q What inputs were requested by the Secretary of the Interior of the Coastal Zone Management office?

MR. JENSEN: Objection--

Q --prior to the issuance of the final environmental statement on sale 40?

MR. JENSEN: Now we're going way beyond what the man testified to.

THE COURT: If you know.

A I don't know.

Q You don't actually know how the lines of responsibility between the two agencies worked before May of 1976, do you?

A I don't know what particular pieces of information were requested or given, but I know what the lines of responsibility were, yes.

Q You don't know how they functioned, though. You know what was on paper?

A I know what was on paper with regard to those

Haintz-cross/Like

1596

responsibilities, yes.

Q You testified earlier that you were making an assumption that exploration will take place in two to three years; is that right?

A Yes.

Q What's the basis for that assumption?

A The basis for that assumption has been my experience with a number of studies which have been done of the on-shore facilities and impact associated with OCS development.

Q What do you know specifically about plans for exploration in the OCS Sale 40 area?

A Specifically about plans for exploration?

Q Yes, sir.

A I don't know of any specific plans for exploration in the Sale 40 area.

Q You have no information at this time as to when such exploration will begin, isn't that correct?

A That's true.

Q Who will conduct that exploration?

A It will be conducted by the lessees--

Q You don't know which lessee, isn't that so?

A There's only one lessee for each tract.

Q You don't know which of the lessees of which



## Heintz-cross/Like

1  
2 of the tracts are going to begin exploration first or what  
3 sequence the exploration will follow or how long it will  
4 take for the particular lessees to finish the exploration?

5 A That is not information I have available to  
6 me in my position.

7 Q Has the department, to your knowledge, received  
8 any information from any lessee indicating when that par-  
9 ticular lessee intends to begin exploration?

10 A I don't know.

11 Q That estimate of two to three years is one  
12 that could be substantially altered if the lessees involved  
13 choose not to begin exploration as soon as you think they will  
14 based upon past experience in other areas; isn't that so?

15 A Yes, that's so.

16 Q If that in fact takes place, the exploration  
17 period could extend more than two to three years from the  
18 date of the sale?

19 A That is so.

20 Q If that happens that pushes all of the other  
21 time segments further into the future, such as development,  
22 such as production?

23 A Yes, sir.

24 Q At what time-- Withdrawn.

25 Is it true that some time after exploration

1  
2 begins there will be a decision made as to whether or not  
3 tankers or pipelines will be used?

4 A Some point after exploration begins?

5 Q Yes.

6 A Yes.

7 Q Do you know approximately when and how long af-  
8 ter exploration such a decision will be made?

9 A Of the first decisions of that kind we would  
10 expect to be made two or three years after exploration  
11 begins.

12 Q So if exploration were to be completed within  
13 three years from date, and I'm using your assumption that  
14 exploration will take two to three years, if exploration is  
15 completed two to three years from date, it will take another  
16 two years beyond that to know whether there would be tankers  
17 or pipelines; is that correct?

18 A You said after exploration began, I'm sorry?

19 Q Let me rephrase my question. I think I was  
20 not as clear as I should have been.

21 Let us suppose that exploration begins on  
22 January 1st, 1978. How long after that do you estimate  
23 it would take before a decision is made as to whether to  
24 use tankers or pipelines?

25 A The first such decisions-- There are a number



1589

Heintz-cross/Like

of them -- would be made in the period two to three years after the beginning of the exploration.

Q If exploration activities began on January 1, 1978, it could take until January 1, 1981 until decision is made; is that correct?

A It could take longer than that, yes.

(Continued on the next page.)

Hs fols<sup>11</sup>

2 Q Could it take longer than January 1, 1981?

3 A Yes.

4 Q What scenarios can you describe that would  
5 extend the period of time within which to base a decision as  
6 to tankers or pipelines being concerned?

7 A In a situation where there remains some  
8 uncertainty about the size or nature of the reserve that  
9 has been found, which needs to be resolved through further  
10 exploration. Of course any discussion about the actual  
11 routing of the pipeline or the routing of the tankers or off-  
12 shore facilities that would be necessary for servicing tankers,  
13 that would affect substantially the cost, and would also  
14 tend to extend the time before a decision is made.

15 Q So there are economic factors which will  
16 determine whether or not pipelines or tankers are used and  
17 the nature of those economic factors will determine the  
18 amount of time it takes to make a decision as to tankers  
19 or pipelines?

20 A I would say influence rather than determine.

21 Q Now, would you agree with me that the scope  
22 and content of Coastal Zone Management planning, which is  
23 undertaken by either New York or New Jersey, will vary  
24 depending on whether or not pipelines or tankers are to be  
25 used with Sale 40 development production?



1  
2 A I don't understand the question.

3 Q I will repeat it.

4 Would you agree with me that the scope and  
5 the content of the Coastal Zone planning undertaken by  
6 New York and New Jersey will vary depending upon whether the  
7 Coastal Zone states have to cope with pipelines or whether  
8 or not tankers are used?

9 A I don't believe the scope would vary.

10 Q Would the content vary, the elements of the  
11 Coastal Zone plan vary depending upon tankers or pipelines  
12 being used?

13 A Yes.

14 Q You estimated that New Jersey's CZM plan would  
15 be approved sometime in 1978. You said that in response to  
16 the Judge's question; is that correct?

17 A That's correct.

18 Q If New Jersey presented a plan and went to the  
19 process of review and had a plan that was approved in 1978,  
20 it is possible that as of the time that plan is contemplated,  
21 there would not have been a decision on whether tankers or  
22 pipelines were to be used?

23 A That is right, except --

24 Q So --

25 MR. HYMAN: He did not finish.

1 A (Continuing) Except I would prefer not to use  
2 the word plan, but program. They connote different things.

3 Q You would agree with me that you would have an  
4 approved New Jersey program in 1978 at a time when the  
5 issue of whether or not tankers or pipelines were to be used  
6 was still unresolved?

7 A That is correct.

8 Q And once that plan is approved, then certain  
9 activities could begin to take place, having to do -- having  
10 an impact on New Jersey?

11 A You are talking about the Coastal Zone  
12 Management Program?

13 Q I am postulating a hypothetical where the  
14 New Jersey Coastal Zone Management Plan was approved in 1978,  
15 before the issue of pipelines or tankers was resolved. Do  
16 you understand what I am suggesting to you?

17 A No, I don't.

18 Q I want you to assume that the New Jersey  
19 Coastal Zone Management Plan is approved in 1978 --

20 A Yes, I understand.

21 Q -- I want you to assume as of the time the  
22 New Jersey plan is approved, there still has not been a  
23 decision on whether or not tankers or pipelines are going to  
24 be used.  
25



4  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A I understand that.

Q The elements that New Jersey program or plan or whatever you want to call it is approved —

A I see.

Q — and the on-shore impact that might flow from the use of pipelines —

A That is not a correct conclusion.

Q — if the decision whether to have tankers or pipelines has not yet been decided in 1978, New Jersey at the time it adopts its program in 1978, and that program is approved, would still not know where the pipelines would go, right?

A Correct.

Q Having obtained and approved CZM plan in 1978, what activities could then be evaluated under the consistency provisions of the plan?

A All activities which are under Federal permit and which affect the coastal zone.

Q The moment you have that approved plan, those activities would be evaluated to see whether they are consistent with the approved plan?

A Maybe I can make a comment?

Q No.

THE COURT: Yes, why don't you let him?

1  
2           A       The thing that is confusing me about your line  
3 of questioning is your continued use of the word "plan" as  
4 if it were a document frozen for all times. The reason I  
5 have suggested the use of the word "program" is that  
6 program sets forth the basic procedures and guidelines and  
7 policies by which future decisions of a planning nature  
8 will be made, so that at the time a management program has  
9 been given Federal authority by the Secretary of Commerce,  
10 it is not necessary to know exactly the location and type  
11 and magnitude of all of the future activities that may  
12 occur within or affect the Coastal Zone.

13           Q       Sir, suppose the programs submitted by New  
14 Jersey, and which are approved by the Secretary of Commerce,  
15 says no pipelines and as of the point it is approved you  
16 still do not have any pipelines because you have not decided  
17 whether you will have tankers or pipelines? Let us say  
18 after the exploration period is concluded, a decision is  
19 then made by the petroleum lessees that they want to go to  
20 pipelines? At that point they would be in contravention of  
21 the approved Coastal Management plan -- program, because  
22 under my hypothetical you would have an approved program  
23 in 1978, taking place before a decision had been made on  
24 tankers or pipelines, so that once the decision of pipelines  
25 was made you might have a situation of confrontation between



6 1

2 the lessee or lessees who want pipelines, who are suddenly  
3 unable to get that pipeline through because the New Jersey  
4 program does not provide for pipelines and has been approved  
5 as not providing for it; is that correct?

6

MR. BRUCE: Before the witness answers, I would  
7 like to object to a false premise. It is inconsistent  
8 with the dialog that your Honor had —

9

THE COURT: I was not assuming that.

10

MR. BRUCE: Mr. Like's question does and I  
11 would like to register my objection to it, because it  
12 is misleading.

13

THE COURT: You can answer it.

14

Please bring your examination to a head. It  
15 is after 7:00 and everybody has been working for a  
16 long time.

17

A I think as a matter of fact it's the hypothesis  
18 that if in fact the Secretary of Commerce would approve a  
19 state management program, which incorporated in it an outright  
20 ban against pipelines, that causes the difficulty here. The  
21 section which I read would appear to require that the program  
22 provide for adequate consideration of pipelines and if it  
23 did in fact provide for consideration of pipelines, before  
24 saying yes or no or if you do this or if you go to a  
25 particular proposal for a pipeline, then in fact the

2 inconsistency which you have been getting at between the  
3 timing of the program's approval and the timing of the  
4 pipelines versus tankers decision disappears.

5 THE COURT: Would you bring this cross-examination  
6 to a head. We simply have to go and the witness has to go  
7 back to Washington.

8 MR. LIKE: He is not coming back tomorrow?

9 MR. HYMAN: We have no intention. I would like  
10 to finish up with the witness tonight.

11 MR. LIKE: I am trying. I am trying to develop  
12 a line of cross-examination which is intended to  
13 consider the fact that you might be overwhelming the  
14 local Coastal Zone Management process or you might be  
15 confronted by --

16 THE COURT: You made your point. It is argument  
17 you can make further in your brief.

18 Q If New Jersey gives careful consideration and  
19 reaches a decision that pipelines should be prohibited  
20 because of whatever the land use policies of the state are  
21 or whatever the environmental protection policies are, and  
22 if the Secretary makes a finding that New Jersey has given  
23 adequate consideration and approves New Jersey's program in  
24 1978, and if by 1978 the decision on tanker-pipelines has not  
25 yet been made, you could have a situation where the lessees



1607

Mintz-cross/Like

8

7a

desirous of bringing pipelines ashore, could not do so because  
that pipeline would not meet the consistencies provision?

(continued next page)

Heintz - cross - Like

MR. BRUCE: Your Honor, objection.

1638

THE COURT: Sustained.

MR. LIKE: I didn't get a clear answer to that question.

THE COURT: Well, there is no clean answer. It's a chicken and egg problem. Which comes first.

Q Now --

THE COURT: Perhaps it will be flexible enough to take account of future developments.

Q From a planning standpoint, would it be -- would it make more sense for the tanker pipeline decision were made first so that the inputs and the consequences of that decision and the impacts flowing from that decision could be -- could become inputs to the coastal zone management process in New Jersey and in New York?

MR. HYMAN: Objection.

THE COURT: I will allow it.

Answer it: briefly, if you will.

THE WITNESS: No, I don't think it would necessarily make more sense. I think --

Q I didn't say necessarily make more sense.

A No.

Q But it would be to the advantage --

THE COURT: Don't argue. He answered the question. Next question.



1609

Heintz - cross - Like

2 Next question.

3 Q Would it be to the advantage of the coastal  
4 zone planners who are sitting down to develop the elements  
5 of the program to cope with onshore impacts to know that  
6 pipelines will be used as these pipelines will go to a  
7 particular landfall and then plan to accomadate or cope  
8 with the impact caused by those landfalls?

9 MR. HYMAN: Objection. There's been a lot  
10 of testimony that you can't plan for pipelines until  
11 exploration is completed.

12 THE COURT: Clearly, the answer would be, yes.  
13 It would be better if we knew all of this. The more  
14 we know the better it would be. Isn't that correct?

15 THE WITNESS: I agree that many planners would  
16 rather not be confronted with that decision. but  
17 would rather to participate in it.

18 MR. HYMAN: And you have to know the oil is  
19 there and you have to know enough to bring this by  
20 pipeline.

21 THE COURT: Please. Don't argue.

22 MR. HYMAN: I don't think it's argument. It is  
23 common sense.

24 THE COURT: I don't.

25 Q Now, do you agree with the statement in the OTA

3 1  
2 report, volume one, that the claim that there will be  
3 ample time for coastal zone planning management to be  
4 completed before offshore development production takes place  
5 is not true because of the following:

6 There is one aspect of the pattern of development,  
7 however, that could compress the lead times for off shore  
8 development . Oil companies contract with independent  
9 service companies for most of the goods and services  
10 involved in exploratory and production drilling. Some  
11 service companies would establish operations on the East  
12 coast at the onset of exploration drilling, which could  
13 begin early in 1977. Service companies tend to cluster in  
14 the same area so that the first of these companies to  
15 establish an East coast base might very well make a long  
16 lasting decision about the location of staging areas and  
17 other support facilities before either New Jersey or  
18 Delaware had completed a coastal zone management plan.

19 MR. BRUCE: I object to this. He is obviously  
20 reading from a --

21 MR. LIKE: Well, all right. You want me to find  
22 the citation?

23 MR. BRUCE: You're reading from another  
24 document. You're reading from a brief. Not from the --

25 THE COURT: He's entitled to phrase his question



1611

Heintz - cross - Like

any way he wishes.

Q Do you agree with that?

MR. HYMAN: Ask him if he ever heard of the statement? He said he didn't read the final report. He's not an expert.

MR. LIKE: I'm entitled to ask whether the witness agrees with a statement with respect to the problems of --

THE COURT: You can develop it. Ask it.

THE WITNESS: No, I don't agree with it.

MR. HYMAN: He got an answer and a question.

MR. LIKE: And for the Court's benefit and the party's benefit, I read to the witness a statement appearing on page 135 of the OTA One report.

THE COURT: Allright. Next question, please. Please bring it to a close.

Q Is it true that the DLM has contracted for a coast benefit analysis of a question of oil development as it relates to coastal areas and that the deadline for completion of the work under their contract is June of 1977?

A I don't recognize it under that description. Would you give a time and title of the study?

A I am reading to you from OTA One at page 135.

MR. HYMAN: Again, your Honor, I must object. The

Heintz - cross - Like

1612

gentleman said he never saw that report.

MR. LIKE: I am trying to see if I can refresh his recollection as to a particular transaction.

MR. HYMAN: How can you refresh his recollection?

THE COURT: Mr. Hyman, please.

Q DRM also handles or regulates the collection and dissemination of other types of information in addition to that gathered in base line studies and environmental monitoring .

One example is a contract for a comparison of cost and benefits of oil development as it relates to coastal areas. This contract was sent out for bids in February 1976, nearly a year after the call for nomination of tracts for leasing, despite the fact that the states had been expressing concern for more than two years that they might have to underwrite part of the cost of offshore development by providing new roads, new schools, and other public services to support an increase in population.

Deadline for completion of the contract -- assuming that the deadline will be met -- is June, 1977, by which time exploratory drilling probably will be under way off New Jersey and Delaware.

Are you familiar with any such contract for a cost benefit analysis?



1                               Heintz   - cross - Like

2               A           I am familiar with the contract that meets those  
3 general time descriptions there, but certainly does not  
4 meet the analytical description.

5               Q           What kind of a contract are you talking about  
6 that you say you are familiar with that meets that  
7 general description?

8               A           I am talking about a study on contracts headed  
9 by the national science foundation supported with funds  
10 from the national science foundation, bureau of lands  
11 office, and the office of coastal zone management.

12              Q           To do what?

13              A           Develop methods of assessing the economic and  
14 employment impacts on shore from OCS development.

15              Q           Any particular OCS development activity?

16              A           The methods are intended to be general. They  
17 will be applied to the Baltimore canyon region as a test  
18 case. And the work is intended to be completed by June of  
19 1977.

20                           MR. LIKE: Thank you, your Honor.

21                           THE COURT: Thank you very much.

22                           MR. JENSEN: Can I have a couple of-questions?

23                           THE COURT: No, I don't think so. I think we  
24 ought to let the witness go home.

25                           MR. JENSEN: I only have two questions and then

Heintz - redirect - Jensen

1614

I will be through.

THE COURT: All right, go ahead.

REDIRECT EXAMINATION

BY MR. JENSEN:

Q You were questioned by Mr. Kaufman concerning the amount of monies that are being expended under the coastal zone management plan? To make the record complete, is funding also going to the states of Maryland and Virginia?

A Yes.

Q Would they be receiving funds on the same order of magnitude as they 3 or 4 other states you described in your direct testimony?

A Yes. Generally. Although the formula allocated, the funds include population and lines of -- miles of coastline so that it varied from state to state.

Q Now, the Court questioned you concerning the location of tracts with respect to the possible location of pipelines in Northern New Jersey. Do you recall that?

A Yes.

Q Do you know whether or not there are available oil and gas reserves under that portion of the ocean? Somewhat north would be closer to the northern part of New Jersey?

A Available reserves, no.



Balsley-direct-Hyman

1  
2 A I have a Bachelors with honors from California  
3 Institute of Technology, Masters and Ph.D. from Harvard.

4 Q Your Ph.D. from Harvard is in what area?

5 A Geology and geophysics.

6 Q Have you published any scientific materials  
7 during the course of your --

8 A Yes, many.

9 Q What if anything can you tell this Court about  
10 the Outer Continental Shelf Research Management Advisory Board?

11 A This was a board that was set up by the  
12 Secretary of the Interior to coordinate the activities of the  
13 Department of Interior with the states with respect to the  
14 Outer Continental Shelf.

15 Q Were you ever a member of that Board?

16 A No, I was not.

17 Q Did there come a time when the Outer Continen-  
18 tal Shelf Reserve Board was either enlarged or divided into  
19 two separate organizations?

20 A Divided into two separate organizations, the  
21 O.C.S. Policy Advisory Board and the O.C.S. Environmental  
22 Studies Advisory Committee.

23 Q You are the Chairman of the Outer Continental  
24 Shelf Environmental Studies Advisory --

25 A Yes, sir.

1  
2 Q This committee deals with scientific and  
3 technical studies concerning the Outer Continental Shelf?

4 A Yes, sir.

5 Q Does this committee review proposed studies,  
6 scientific studies that are to be undertaken concerning say,  
7 baseline studies or any scientific studies in the ocean?

8 A Yes.

9 Q Does this committee review post contracts?

10 A Yes.

11 Q Which the Government is to review with various  
12 scientists and scientific organizations concerning the Outer  
13 Continental Shelf?

14 A Yes.

15 Q Does this committee review the completed studies  
16 completed by such researchers?

17 A Yes.

18 Q There are state members on this committee?

19 A Yes. It's mostly state members.

20 Q Does this committee publish annual reports?

21 A Yes, they do.

22 Q Dr. Balsley, I show you T-40 -- I'm sorry,  
23 T-4E and T-4D and T-4C; I ask you if those are the annual  
24 reports published by your committee in 1974 and 1975, and  
25 the draft for 1976?



THE COURT: Anything further?

MR. BRUCE: I have one limited question.

CROSS-EXAMINATION

BY MR. BRUCE:

Q Mr. Balsley-- excuse me Dr. Balsley, you have a PhD in Geology from Harvard?

A Yes.

Q You were in the courtroom yesterday were you not during the testimony of Christopher Rand?

A Yes.

Q Do you recall testimony by Mr. Rand in response to questions I think put to him by Mr. Like, that it would be feasible to set a policy or a goal or directive, if you will, that exploration in the mid Atlantic Sale 40 area should be for gas only, as opposed to gas and oil?

A Yes.

Q As a geologist, given the characteristics of the Sale 40 area, and specifically given the fact that no prior explanation has taken place there, do you agree with Mr. Rand's analysis?

A It's impossible -- we know that under certain geologic conditions some oil reservoirs will contain mostly gas or mostly oil or a combination thereof, but it is impossible to predict in advance without drilling what is there.

Balsley cross:

638

1  
2 Q In other words, it is the exploration drilling  
3 itself that tells you what is there?

4 A Yes.

5 Q Before you sink the hole, before you explore,  
6 you don't know?

7 A Not before hand, no.

8 MR. BRUCE: That is all I have, your Honor.

9 CROSS-EXAMINATION

10 BY MR. KAUFMAN:

11 Q Dr. Balsley, you took over this OCS Committee  
12 in December of 1975, you said?

13 A November. I attended the August meeting and  
14 was Chairman of the November meeting.

15 Q Do you recall whether or not between -- did you  
16 commission any legal study in November of 1975, until let us  
17 say April of 1976?

18 A Our Committee does not commission any studies.  
19 We review studies that are undertaken by the Bureaus of the  
20 Department.

21 Q Did you review any legal studies, during that  
22 period of time?

23 A I have not, no.

24 Q Did the Committee?

25 A I don't remember any legal studies.



1  
2 Our primary interest has to do with environmental  
3 studies.

4 Q As part of your environmental studies, did  
5 you examine the existence of local laws that have to do with  
6 the zoning?

7 A No.

8 MR. KAUFMAN: I have no further questions.

9 CROSS-EXAMINATION

10 BY MR. LIKE:

11 Q Dr. Balsley, is it true that criticism and  
12 concerns over the purpose and scope of the BLM Base Line  
13 Study Program were expressed by the following organizations:

14 Fish and Wild Life Service?

15 A Yes.

16 Q Council of Environmental Quality?

17 A Yes.

18 Q The Environmental Protection Agency?

19 A Yes.

20 Q National Marine Fishery Service?

21 A I do not know of that.

22 Q NOAA?

23 A In our Committee, I don't believe they objected.

24 Q Aside from your Committee, are you aware of  
25 concerns having been expressed by NOAA with regard to the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A            They participated in it. They may — I don't know.

Q Are you aware that Mr. Rosenhouse in his deposition, taken last Summer, testified to that effect, that NCIA was one of the organizations which expressed concern and criticism?

A        No, I am not.

Q And that each of the other organizations which I mentioned, and which you identified as having expressed concerns, did in fact do so?

A In our Committee I have heard these concerns expressed.

Q Do you know the nature of the criticism and concerns that were expressed by these various agencies?

MR. BRUCE: I object to counsel going further down this road. What Mr. Like is trying to do now is put in the viewpoints of some Federal agencies on environmental base line studies. The witness may have mentioned the base line studies. That was not the purpose and thrust of the direct. Now, to go into detail into exchanges, between the Federal agencies is beyond the scope of the direct.

MR. LIKE: Your Honor is interested in what the



Secretary had before him in May of 1976.

You may ask, but do not go too far afield.

The question before you:

Are you aware of the nature of the criticisms and concerns that were expressed by these organizations?

A In general, yes.

Q What were they?

A In general, differences of scientific opinion relating to the emphasis on the environmental studies. There is a certain amount of money set aside for those studies. Each particular group felt that a particular type of study was most important. One of the functions of our Committee, and we are very active in this, is trying to serve my masters. There is a tremendous amount of information to be gained. Even though many millions of dollars are involved, the possibility of collecting all of these data and the time that is required, in all areas is impossible.

Q Was an analysis made of those criticisms and concerns expressed by these organizations and placed before the secretary for his review, before he 's made his decision to hold at least 407

A I don't know. I was not active at that time in this area.

Q Have you ever seen any document summarizing or

1  
2 reviewing in any detail the criticisms and concerns expressed  
3 by those organizations?

4 A Yes, recently, but not -- only since I had  
5 become Chairman of this committee.

6 Q What documents did you see--

7 MR. BRUCE: I object to Mr. Like exploring this.  
8 He's precipitated several rulings from your Honor this  
9 morning that these recent documents are inadmissible.

10 MR. LIKE: We haven't established yet the date  
11 of the documents. I am seeking to determine what  
12 documents might have been in existence and available  
13 to the secretary before he acted in May of 1976.

14 THE COURT: You may inquire.

15 A As I said I have only become active as Chairman--  
16 I attended the meeting in August and chaired the meeting in  
17 November and prior to that I have no knowledge.

18 Q You said you saw a document which set forth  
19 a review of the criticisms and concerns that were expressed  
20 by these organizations, concerning the purpose and scope of  
21 the base line study?

22 A If I said so, I don't believe that is what I  
23 answered.

24 Q Have you seen anything in writing setting forth  
25 what those concerns were?



1  
2 MR. BRUCE: I object to the question, unless  
3 prefaced by a time qualification, that it was  
4 published -- the document was written before the  
5 Spring of 1976.

6 THE COURT: Sustained.

7 Q Have you seen any documents dated prior to  
8 May or June of 1976 reviewing the criticisms and concerns  
9 that I have questioned you on?

10 A No.

11 Q Is it true, Dr. Balsley, that the base line  
12 studies -- withdrawn.

13 When was the base line studies program initiated  
14 by BLM?

15 A I can't answer that exactly.

16 Q Was it before May of 1976?

17 A I am not sure.

18 Q Do you know when the mid Atlantic base line  
19 study was contracted for or when RFP's were sent out?

20 A Not exactly, no.

21 Q Are you familiar with what the base line study  
22 program is?

23 A Yes.

24 Q Is it true that the base line studies are not  
25 designed to predict OCS Developmental Impact?

Balsley-cross

644

1  
2 Is it true that they are not designed to predict  
3 OCS Developmental Impact?

4 A No, I think they are designed.

5 As I said there are many many aspects and it is  
6 not possible to spend enough money to gather all of the  
7 information that is needed. It takes time.

8 (continued next page)  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



2 Q Doctor Balsley, I would --

3 A Some of these things require 5 year studies.

4 Q Is it your testimony today that the base line  
5 study program is designed to predict OCS developmental  
6 impact, yes or no?

7 A I would say yes.

8 Q All right, is it your testimony that the base  
9 line study program is designed to add decision making as to  
10 how, when or if to lease in the OCS?

11 A Yes.

12 Q Is it your testimony that the environmental  
13 study program is designed to require data for input into  
14 cites specific in environmental statements?

15 A Not yet, but this is designed as a dynamic  
16 thing, it's a continuing activity. There are no cite specific  
17 needs right now, but it will contribute to later cites specific  
18 studies.

19 Q Did the mid-Atlantic base line study program  
20 contribute any specific inputs for the final environmental  
21 statement for sale 40?

22 A That was before my time.

23 Q Do you know whether it did, based upon the  
24 knowledge that you have obtained since becoming connected with  
25 your present position?

2

1

Balsley - cross

2

A No, I do not.

3

Q Are you aware, Doctor Balsley, that in the

4

program -- withdrawn.

5

Are you familiar with the program's final  
environmental statement, the problematic?

7

A I have seen it, but not read it.

8

Q Have you looked at the portions containing

9

statements by the Interior Department concerning a base line  
statements and their purposes?

11

A No.

12

MR. HYMAN: Objection to the question.

13

Q Would you agree with me, Doctor Balsley, that

14

the purpose of the base line study program is not as you have

15

testified, which is to predict OCS developmental impact, but

16

designed to identify the effects of OCS operations after they

17

have taken place?

18

MR. HYMAN: Objection, your Honor. He asked

19

the question before and got an answer. Now he is

20

arguing with the witness.

21

MR. LIKE: I am entitled to cross-examine him

22

as to the accuracy of his testimony.

23

THE COURT: Do you follow the question?

24

THE WITNESS: No, I do not.

25

MR. LIKE: I will repeat it.



3  
1  
2 C You have testified that the purpose of the  
3 base line studies--that they are designed to predict OCS  
4 developmental impact?

5 A That's one of the things that they are  
6 designed to do, yes.

7 C I am asking you whether you are willing to  
8 withdraw that statement and to agree with me that that is  
9 not their purpose, and their sole purpose is to identify  
10 the effects of OCS operations after they have taken place?

11 A No.

12 C And you are not aware of any statements  
13 contained in any of the environmental statements issued by  
14 the Interior department which contradict the statements  
15 that you are giving today in Court, are you?

16 A No, I have not read that impact statement.

17 MR. BRUCE: I object to a continuation of  
18 this line of inquiry. As I stated in my earlier  
19 objections it has nothing to do with the direct  
20 testimony of this witness, which was to focus on  
21 the state-Federal relationship. It is an attempt  
22 to get the witness into the impact statement. He  
23 didn't read them, he didn't have responsibility that  
24 would cause him to do so. I think we are getting a  
25 bunch of questions and answers that are not contributing

anything.

THE COURT: On the grounds it is not within the scope of the direct, overrulled.

Bring this to a close. He apparently doesn't know anything about what happened before he took office.

Q When did you take office?

A As I said I attended the August meeting -- the August '76 meeting of the OCS committee and chaired the November meeting of '76.

Q You know nothing of what has happened before August of '76?

A Of course, I know many things, but not with respect to this committee.

Q I am asking you with respect to environmental studies and base line studies. Not with respect to your committee, do you know anything about the base line studies program -- the environmental studies program as far as it existed before August of 1976?

A Not in detail. I know it existed before August. I have read minutes and that sort of thing. I have read public documents but I haven't read all of them.

Q Would you agree with me that the purpose of the environmental studies have not been fully defined, that it is



Balsley - cross

not clear how the information that is developed from those studies can't or will be used in the decision making process of recent OCS lands and managing and regulating subsequent OCS lands?

MR. HYMAN: Objection to the question.

MR. LIKE: All of my questions have to do with the period prior to decision by the Secretary in May of 1976.

THE COURT: If you can answer it, answer it. If you cannot, say you cannot.

THE WITNESS: Will you repeat the question?

Q Is it true that the purpose of the environmental studies that were initiated by the BLM before the decision to hold lease sale 40, had not been fully defined and that it is not clear how the information developed through those studies can or will be used in the decision making process of leasing OCS lands and managing and regulating subsequent OCS activities?

A That's in the process. As I said, it is a dynamic thing. It is in the process of being reviewed now. We have a response which I guess is disallowed, which addresses this particular thing. Prior the BLM under the offices of my committee has addressed the problem of how these data are used in the decision making process.

Balsley - cross

1630

Q Would you agree with me:

As of May of 1976, that the purpose of those studies had not yet been fully defined and it was not clear at that time how the information developed through those studies, can or would be used in the decision making process of leasing OCS lands and managing and regulating subsequent OCS activities?

A All I know is that it is a series of scientific studies and these are not fixed definitions. You do not know how they are going to be used until you find out the data. It is not something that you can set fixed scientific studies on. It's a scientific study. You can't predict what it is going to be until you have undertaken it.

Q Is it true that as of May of 1976 there was no clear relationship between the environmental studies program and the OCS decision making process?

MR. HYMAN: Objection, the witness answered that question 50 times. He doesn't know. He was not a member of this committee. He is being harrassed at this point.

THE COURT: He is not being harrassed. If you can answer, say so.

A I don't know --

THE COURT: That is enough.

A (Continuing) -- the environmental studies in

BEST COPY AVAILABLE



7

1

Balsley - cross

2

detail prior to August of 1976.

3

Q Do you know --

4

THE COURT: He says he does not know.

5

6

Q Do you know as of today, as you are testifying,  
whether there is any clear relationship between the environ-  
mental studies --

7

8

MR. HYMAN: Same objection.

9

THE COURT: Sustained.

10

Q Are you familiar with a study that was put out  
by the Office of Technology assessment dated March 16th, 1976  
entitled, "Summary of an Interim Report of the Technology  
Assessment Effects, Coastal Zone Off shore Energy Development,  
Oil and Gas"?

11

12

13

14

15

A I don't recognize it. May I see it?

16

(Whereupon document showed to witness.)

17

No, I have not read it.

18

Q I show you page 30 --

19

MR. HYMAN: Your Honor, I object to the use of  
that document for cross-examination. It is subsequent  
to the final impact statement.

20

21

22

MR. LIKE: It is before.

23

THE COURT: You may proceed.

24

Q Would you read the portion that I have bracketed  
on page 30 and tell me whether or not you agree or disagree

25

Balsley - cross

1632

with that statement?

(Shown to witness.)

Read it out loud.

A The lack of clear relationship --

Q Start with the top.

MR. HYMAN: I object. If he is testing this witnesses knowledge of the English language --

MR. LIKE: I would like the witness to read it so the Court can pass upon the question.

MR. HYMAN: I think it is the lawyer's duty to read the question to the witness.

THE COURT: I will permit it to be done this way. The witness will be able to answer more intelligently.

A The purpose of these studies has not been fully defined and it is not clear how the information developed can or will be adduced in the decision making process of leasing OCS lands and in managing or regulating subsequent OCS activity.

The lack of a clear relationship between environmental studies and the OCS decision making process, however, is the principal issue. If there is little or no relationship between the study and management decisions, then the value of the investment in them is questionable. If the studies do not include environmentally sensitive regions or do not project



adequate scientific evidence, then the value of the results are questionable.

Q Do you agree with this as a fair statement of the purpose and objectives of environmental studies?

A Well, this is a philosophical statement which I agree with.

MR. LIKE: Thank you. I would offer this document into evidence. It was dated March 16th, 1976, and was available to the Secretary. It is an official document issued by the Office of Technology.

MR. HYMAN: The Government objects. It was not marked prior. It was not given to the Government. There is a Court order limiting the amount of evidence submitted. We have no opportunity to study or look at it. He has been violating the Court's order throughout the trial --

PICCIANO: I have not seen many of Mr. Hyman's exhibits --

MR. HYMAN: That is not true. Each one of my exhibits were marked pursuant to your order with Mr. Kaufman.

THE COURT: Why wasn't it shown?

MR. LIKE: This document is the precursor of the interim report of the Coastal Effects document that

1  
2 Q To aid you in answering the question, I will  
3 show you the paragraph that I am calling to your attention,  
4 and I ask you to please read it.

5 A "The EIS is supposed to guide the Secretary  
6 on the question of whether a lease sale should be held and  
7 which tracts should be leased. But it can do that only if it  
8 contains some minimum information gathered through base  
9 line studies, which are completed before the EIS is written.  
10 Without such data a Secretary cannot decide which off shore  
11 and on shore areas are environmentally sensitive or are  
12 otherwise not suitable for drilling or for siting of  
13 exploratory support facilities. However, the environmental  
14 baseline study for the mid-Atlantic area will not even be  
15 completed until February 1977, nearly 6 months after the  
16 lease sale."

17 Q Thank you.

18 As a scientist and as a person with significant  
19 responsibility for the environmental studies program, do you  
20 agree with the scientific judgement expressed in the quotation  
21 which you have just read from T-201 in evidence?

22 A Information can be gained in other ways. I'd  
23 have to look at that pretty carefully.

24 Q I will give you that again.

25 (Document handed to witness.)



IG/tk

3am1

1  
2 A Basically, there is never enough information to  
3 make any of our decisions and the decision as to whether a  
4 lease sale should be held and which tract should be leased,  
5 in my opinion, could be conducted with -- prior to all of the  
6 information being available.

7 When it comes time to put out exploratory  
8 permits, developmental permits, more information will be  
9 required and it is at that time when, when most of the  
10 environmental information is the most important.

11 Again, it is a continuum of collecting informa-  
12 tion and its use in decision-making processes.

13 There is no -- It is not like handling traffic  
14 with red and green stoplights.

15 Q I put my question to you again.

16 Do you agree with this statement quoted as  
17 being --

18 MR. HYMAN: He asked a question and got an  
19 answer --

20 Q (cont) -- as being a reasonable and fair  
21 statement as the purpose of EIS and the function of the  
22 baseline study information as input to the secretary to aid  
23 him in his decision-making processes?

24 MR. HYMAN: Objection. The question is  
25 repetitious.

Balsley - cross/Like

THE COURT: If you can answer it.

THE WITNESS: I think I already have answered it.

THE COURT: That is enough. Thank you.

Q Would you now read from the same page --

A I'm going to have to have a glass of water if  
I do much more reading.

THE COURT: Give him a glass of water.

(Clerk complies.)

A That whole paragraph?

Q Yes.

A "NOAA is presently conducting a broad range of  
environmental studies for BLM. In the mid-Atlantic,  
the Virginia Institute of Marine Science is under  
contract to BLM to conduct an off-shore base line  
study only. In all cases, lease sales are planned  
before any data from these studies are available and,  
therefore, the timing of the studies has been severely  
criticized. It is evident that the environmental  
studies to date are useful neither for the EIS process  
or to affect a leasing decision, because they are not  
completed in time to be used. It also is not clear  
whether later OCS management decisions could or would  
be affected by data from environmental studies.  
Certainly there is no firm requirement to utilize the



3 1  
2 data. Interior has even opposed legislation which  
3 would give it the power to cancel leases if serious  
4 environmental problems were identified" --

5 Q "By the studies" --

6 A "By the studies."

7 Q Is that an accurate statement?

8 A Certainly not the last part of it.

9 Q What part is accurate?

10 MR. BRUCE: That's just another example of the  
11 same type of criticism contained in the earlier question  
12 by Mr. Like to the witness.

13 Mr. Like is trying to take him as an expert on  
14 environmental studies. It wasn't intended to be that  
15 way and he didn't testify that way.

16 Mr. Like can quote this document in his brief  
17 and your Honor can give it such weight as your Honor  
18 desires.

19 THE COURT: It is a standard method of attacking  
20 the credibility of a witness.

21 If the witness wants to, he can say he does not  
22 know.

23 Q Tell us what portion of that statement you agree  
24 with and what portion you disagree with. Read the portions  
25 you agree with and also indicate the portions you disagree with.

Balsley - cross/Like

659

MR. HYMAN: The point is, I think it is unfair questioning under any method.

The witness said he doesn't agree with the last half of it and expressed no opinion that he disagreed or agreed with any part of it.

By implication, Mr. Like picked up that line and automatically put the answer in the witness' mouth. I think the witness should be allowed to answer, sentence by sentence, and say, I agree, disagree, or don't know.

MR. LIKE: I agree that the witness should have an opportunity to respond to each portion of the paragraph.

A The first two sentences are obviously correct --

Q Read them, please.

A "NOAA is presently conducting a broad range of environmental studies for BLM. In the mid-Atlantic the Virginia Institute of Marine Science is under contract to BLM to conduct an off-shore baseline study only."

Q Is that correct; is that right?

A Yes, that is correct.

Q Please continue.

A "In all cases, lease sales are planned before any data from these studies are available, and, therefore



the timing" -- that part I disagree with -- "therefore the timing of the studies has been severely criticized."

As to that, I am not knowledgeable.

"It is evident that the environmental studies to date are useful neither for the EIS process or to affect a leasing decision because they are not completed in time to be used." Again, it is a continuum of activity. The scientific studies are going to be going on long after we are gone and all the data that are being collected or being used, to the best of my knowledge.

"It also is not clear whether later OCS management decisions could or would be affected by data from environmental studies." That is correct.

"Certainly there is no firm requirement to utilize the data." That is not correct.

Q Where is the requirement you are referring to now saying that the Interior Department will use the data gathered through the baseline study program in connection with decisions to hold lease sales or decisions regarding developmental production?

A This OCS committee -- and I can only speak to it now -- is reviewing all of these studies and making recommendations to the Secretary of Interior.

Q How could the recommendations -- withdrawn.

Balsley - cross/Like

know what he is talking about.

THE COURT: The witness will tell us if he understands.

A No. I know our committee has a subcommittee which is now working, evaluating the baseline studies of the South Atlantic.

Q How about the mid-atlantic?

A That's not yet been -- A subcommittee has not yet been pulled together on that.

Q Will a subcommittee be established to evaluate the mid-Atlantic baseline studies?

MR. HYMAN: Objection. It is activities subsequent to the final EIS --

THE COURT: Sustained.

Q Do you know what scientific or technical references have been gathered for the mid-Atlantic studies with regard to oceanic in-shore estuarine, terrestrial or riverine systems?

A No, I am not familiar with all of the --

Q Would this be an accurate statement --

MR. LIKE: I am reading from Working Paper 7, which is part of plaintiff's exhibit T-213 A, volume 2, working papers --

MR. HYMAN: The Government has a continuing





1  
2 objection to this line of questioning as to statements  
3 coming out of a document which came into existence  
4 subsequent to the BIS question and also reading from a  
5 document to this witness, the document which this  
6 witness is not familiar with.

7 THE COURT: Overruled.

8 Q Phase one; efforts are supposed to center around  
9 summarizing all existing data on the outer continental shelf.

10 Is that accurate?

11 A Yes.

12 Q Out of one thousand references collected for the  
13 Atlantic studies, only 69 are specific for the CCS area.

14 Is that correct?

15 A I don't know.

16 Q Eighty-three are generally oceanic and the  
17 remaining over 800 references cover in-shore estuarine,  
18 in-shore terrestrial or riverine systems.

19 A I don't know.

20 Q It appears more attention to oceanic data is  
21 needed.

22 A I don't know.

23 Q Is there also a phase two, which covers the  
24 phase that begins after the survey of existing data is  
25 completed, and continues through the oil and gas exploration



JUDITH GRESHAM, called as a witness  
having been first duly sworn by the Clerk of the court  
testified as follows:

DIRECT EXAMINATION

BY MR. JENSEN:

Q Miss Gresham, where are you employed?

A At the New York OCS Office, Bureau of Land  
Management.

Q What is your job title?

A Chief of the Operations Division.

Q Could you describe for the Court what that  
entails?

A Yes, the Operations Division is one of the  
three divisions in the Office and we are responsible for  
developing the call for nomination area, participating in  
a tract selection process, participating in the development  
of stipulations, preparation of sale notice, the physical  
handling of the sale and issuance of the leases, the review  
of geological survey, individual tract valuations, partici-  
pation or recommendation to the manager in the accept-reject  
decisions at the sale, maintaining qualifications deposits  
for the companies that are interested in bidding or holding  
leases and once we had our sale last August, we are responsible  
for maintaining the lease records; various documents come in

2 such as sites, changing the record title, interest and leases.

3 We keep these records. I also have in my division  
4 three oceanographers who represent the contracting officer  
5 in Washington in terms of technical compliance with the  
6 environmental studies program contractors.

7 Q How long have you been working for BLM in this  
8 capacity?

9 A I've been working as Chief of Operations  
10 Division since April of '75.

11 Q Were you involved in the process by which  
12 tracts were selected for Lease Sale Number 40?

13 A Yes, I was.

14 Q Were you asked yesterday to prepare a map for  
15 the assistance of the Court in this case that would indicate  
16 the location of the tracts and process by which they were  
17 selected?

18 A We prepared that map this morning.

19 Q I'll show you now what's been marked as  
20 Defendant's Exhibit T-5E (handing); is this the map which you  
21 and your staff prepared?

22 A Yes.

23 Q Could you explain the designations that have  
24 been made or the overlays made upon this map?

25 A Right. The very largest --

BEST COPY AVAILABLE



3

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. JENSEN: Perhaps we should put this up where everyone can see it.

(map placed on the courtroom blackboard)

MR. JENSEN: Before we begin, we offer this map into evidence.

THE COURT: Admit it.

THE CLERK: Map, Defendant's Exhibit marked T-5E in evidence.

(so marked)

MR. JENSEN: The map is rather small. It may be difficult.

Q Could you step down to indicate the areas?  
(witness leaves the stand)

A We issued the call for nominations and comments in March of 1975. The area outlined in purple was the area opened to nominations and comment. It composed approximately 6.5 million acres.

The nominations and comments were due on June 2 of 1975 and these red lines (indicating) extending through the colored area also indicate the tracts which were nominated by industry. That was approximately 3.2 million acres that industry expressed some interest in.

Through the tract selection process 154 tracts were selected for further study in the impact statement and those

Gresham-direct-Jensen

1  
2 are the light purple or lavender, and the deeper colored  
3 ones, 154 blocks.

4 Then, finally, in August, when we held the sale, 101  
5 of these 154 blocks were bid on. 93 were ultimately leased  
6 with 8 being rejected and the 93 that are currently under  
7 lease are the deep purple.

8 THE COURT: What about those ones with the  
9 white holes in them?

10 THE WITNESS: Those are the ones that were  
11 rejected. There are eight tracts that received  
12 rejections on the bids.

13 Q Could you explain on what basis the original  
14 call area was designated?

15 A Basically since this was the first call in the  
16 Mid-Atlantic area, we depended a great deal on geological  
17 survey to help us key into a large area where they might  
18 have some information based on geophysical data that they  
19 had.

20 We determined that we wouldn't go too much further  
21 offshore than the 200 meter line. That's kind of standard  
22 for a first call in an area. We didn't want to just zero  
23 in on the areas that geological survey felt were the best.

24 We wanted to offer a large area because we also  
25 wanted to know what industry information -- information



1  
2 industry had. That is why we kind of selected this area  
3 that was 6.5 million acres.

4 The definition of the call areas is a joint effort  
5 of geological survey and Bureau of Land Management.

6 (cont'd on next page)  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TlpmR2  
kg:ss

Gresham-direct-Jensen

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q At this point in time were you concerned primarily with the estimates as far as potential sources of oil and gas?

A Definitely. We also wanted to have a large area open to comment by environmental groups, concerned citizens, states, local government. That's why we say call for nominations and comments.

The comments are from parties other than industry where the request that they specifically identify tracts that they would prefer would never be leased or not leased at this time.

Q If I understand you, the time for call for nominations was issued, you also requested comments from affected states --

A From anyone that wished to comment. We tried to get as much circulation of that call for nominations and comments as possible through press releases, and our mailing list.

Q After you received --

THE COURT: I would like to interrupt. You say you didn't want to go beyond the 200 fathom line?

THE WITNESS: 200 meter line.

THE COURT: I'm sorry, I understand. I know you are offshore a considerable amount. Why on the



1647

Grasham-direct-Jensen

shoreward side didn't you go further?

THE WITNESS: We had information from geological survey that the area of their prime information for oil and gas was further offshore.

THE COURT: As it turned out it's apparent, isn't it from the cross-hatching industry was very much interested in the areas close to shore off Cape May?

THE WITNESS: We have nominations here and up here (indicating), but during the tract selection process we consider the level of industry interest as indicated through nominations and in this area up in here and all the way down here, here and here (indicating) and down in most of this area, the level of interest was very low.

I'm saying that very few companies out of the twenty that nominated -- nominated those blocks. In the tract selection process we consider level of industry interest, geological surveys information and environmental information.

Q Would that be the prime reason why these areas that the Court is referring to were excluded from the final tract selection?

A That's right, from a very low interest from

1  
2 industry.

3 THE COURT: Environmental aspect have nothing  
4 to do with those exclusion?

5 THE WITNESS: Correct.

6 Q Can you describe

7 THE COURT: Final decision on what you  
8 were going to put up for lease, was I take it, almost  
9 entirely based upon industry interest?

10 THE WITNESS: We take industry interest,  
11 geological surveys information, mix that with environ-  
12 mental and conflicting use information that we have  
13 to develop our tract selection.

14 Even if there were no environmental concerns  
15 in this area, industry interest was so low and geo-  
16 logical survey interest was non-existent.

17 THE COURT: What do you mean by geological  
18 survey --

19 THE WITNESS: As part of the tract selection  
20 process, they have their own geophysicist and geolo-  
21 gist who go over the geophysical information that  
22 CS has and come up with their idea for tract selection.

23 THE COURT: What does that mean, they don't  
24 think oil is up there?

25 THE WITNESS: Right.



2

THE COURT: You say there's a mix between

3

interest and environment and other factors? Is

4

there a formula; how do you mix these things together?

5

THE WITNESS: No formula, because it's different

6

from every tract selection that you go through but

7

you take first the nominations and record them and

8

see how heavy the interest is in different areas.

9

Then during the tract selection process the

10

manager of the office is briefed by his environmental

11

division on the environmental aspects. We have

12

an overlay process where we have environmental

13

briefings and we put over that, say geological

14

hazards or commercial fishing and we put on top of

15

that the overlay that shows the interest in that

16

area.

17

It's a mixing.

18

THE COURT: Your office made the decision?

19

THE WITNESS: We recommend at the field level

20

to the Washington office.

21

THE COURT: Was the ultimate decision the one

22

that you had recommended?

23

MR. BRUCE: Might I inquire into that question?

24

I take it you are asking about the ultimate decision

25

to delineate some tracts for further study in an

1 environmental impact study as an ultimate decision  
2 to lease?

3  
4 THE COURT: Yes. This group in the New York  
5 office made the decision based on all these factors  
6 which were fed in by a variety of people.

7 THE WITNESS: Right.

8 THE COURT: As to what you were going to  
9 nominate.

10 THE WITNESS: Our New York office as well as  
11 the geological survey office that is concerned with  
12 this area, Fish and Wildlife Service, and concerned  
13 states tended the field level tract selection  
14 meeting.

15 THE COURT: Where was that held?

16 THE WITNESS: In our office in New York.

17 THE COURT: What did you do, gather around  
18 maps and say "This is going to be it"?

19 THE WITNESS: Geological survey had its map  
20 of what it wanted or recommended and our manager  
21 had his official selection. We had a kind of  
22 negotiating session.

23 THE COURT: Who made the ultimate decision?

24 THE WITNESS: Geological survey and the planned  
25 management at field level tried to agree on tracts.



1651

Gresham-direct-Jensen

720

2 We put forward a recommendation based on joint  
3 agreement. If there are some that BLM wants to offer  
4 that GS doesn't we send those tracts and suggestions  
5 on them, a separate listing to the Washington office.

6 THE COURT: In this case there was agreement?

7 THE WITNESS: There was agreement on most of  
8 the tracts. There were a few tracts that the bureau  
9 wanted that GS did not recommend and vice versa.

10 At the Washington level they were all accepted.

11 THE COURT: Both yours --

12 THE WITNESS: Right.

13 THE COURT: They put everybody's in?

14 THE WITNESS: Right. I can't recall the exact  
15 number, but somewhere eliminated in the Washington  
16 office.

17 THE COURT: There were some.

18 THE WITNESS: Right.

19 THE COURT: Who eliminated those?

20 THE WITNESS: The headquarters staff level  
21 people.

22 THE COURT: Of who?

23 THE WITNESS: BLM and GS.

24 THE COURT: Working in the same way you work,  
25 they were working with other agencies at the

headquarters level.

Q To clarify this a little bit, all this input you are talking about, would this come after, in effect, the nominations had been received for this cross-hatched area?

A Yes.

Q In other words the process we are talking about now is the reduction of this nominated area down to the tracts which were actually selected to be offered at the sale?

A No, down to the tracts that were selected to be studied in the impact statement. It ended up being the same number, but that wasn't our intention at that time.

Q It would have been possible the tracts could have been eliminated --

A At any time.

Q Even after the EIS process if it had been deemed appropriate?

A Right.

Q You said --

THE COURT: You didn't have all this other information available to you, did you, the draft statements?

THE WITNESS: The draft statement was the next step. This was a broad brush.

THE COURT: You did pretty well based on the



1 limited information you had as it turned out?

2 THE WITNESS: I would say we did.

3 Q Were the affected coastal states given an op-  
4 portunity at any point in this process to have input into the  
5 selection of the tracts to be leased?  
6

7 A Yes, they were invited to send in written  
8 comments at the time the call for nominations and comments  
9 was issued in March and they were also invited to attend the  
10 field level tract selection meeting.

11 Q Did you receive written comments from any of  
12 the states?

13 A We received written comments on the due date,  
14 June 2, or the week of June 2, from Delaware, New Jersey  
15 and Virginia.

16 Q Do you have copies of those comments?

17 A Yes, I do.

18 MR. JENSEN: I'm going to offer them. Obviousl  
19 I haven't been able to make them available to counsel  
20 yet. If there's any strenuous objection, I'll with-  
21 draw the offer. These were the only comments received  
22 from the states in the writing --

23 THE COURT: I'll call the intermediate admini-  
24 strative level.

25 MR. JENSEN: Prior to the drafting of the EIS

9 1  
2 this was the input.

1654

3 THE COURT: Do you want to object?

4 MR. LIKE: I would like to see them.

5 THE WITNESS: I have my summary on the bottom.

6 MR. KAUFMAN: As far as NRDC is concerned, we  
7 don't object. I point out these came in prior to any  
8 time when NRDC would have impact into the process which  
9 takes place at the time of the impact statement. I  
10 have no objection.

11 MR. LIKE: No objection on the part of the  
12 County of Suffolk.

13 MR. KAUFMAN: I point out all three states  
14 were critical.

15 MR. LIKE: The explanation of exploration  
16 production is an option that was very strenuously  
17 recommended by the State of New Jersey.

18 THE COURT: Mark them in evidence.

19 THE CLERK: Four documents marked Defendant's  
20 Exhibit T-5F, T-5G, T-5H, T-5I in evidence.

21 (so marked)

22 Q In addition to these written comments were any  
23 oral comments or presentations made by any of the states?

24 A Yes, these written comments came in as a  
25 response to the call for nominations. Then when we invited

BEST COPY AVAILABLE



10

1

1655

Gresham-direct-Jensen

2

the states to the field level tract selection meeting I recall a few comments that the states made at that time.

3

4

They were asked to participate in any way they wanted, but the comments that I recall came from the geologists of I think, Maryland and New York. At that meeting our environmental division went through the resource details they used at the planners briefing earlier in the month.

5

6

7

8

9

10

11

The geologist in our staff identified a possible shallow fault in the area in two of the tracts that were being considered.

12

13

14

One of the state geologists recommended that those be removed from consideration at the time, not be recommended in a tract selection process.

15

16

17

18

19

Q In either of these written or oral comments did any one of the states through its representatives indicate that they desired that specific tracts not be selected because of concern about related onshore impacts and development of those tracts?

20

21

A Those, there were no recommendations that specific tracts be withheld.

22

23

24

Q Did any of the states indicate that they had a concern about specific tracts because of how it might affect the use of pipelines?

25

A No.

Gresham-direct-Jensen

1656

1  
2 MR. JENSEN: No further questions.

3 MR. KAUFMAN: No questions.

4 MR. BRUCE: Might I have one moment, your

5 Honor?

6 MR. LIKE: I --

7 THE COURT: Wait, there may be some direct.

8 (pause)

9 (continued on next page)

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1657

MR. LIKE: Could we have a few moments to read these exhibits with a little more care before the cross-examination?

THE COURT: Let's finish the direct. I will give you five minutes.

MR. BRUCE: I have no questions.

THE COURT: You want five minutes?

MR. LIKE: Yes.

THE COURT: Take five minutes and then we will have cross.

(Recess taken.)

MR. BRUCE: I have one question.

CROSS-EXAMINATION

BY MR. BRUCE:

Q Referring you to the two shaded areas nearer to shore -- the one nearer to Cape May and the one nearer to Ocean County, I believe you indicated that there was very little interest in the resources expressed by industry; is that correct?

A That's correct.

Q And you indicated that it was for that reason that led to the deletion of those areas for non-inclusion, so to speak, in the selection of the 154 tract?

A That, as well as the lack of information from

1 the geological survey that there might be oil and gas there.

2  
3 Q I take it that this process, as you have  
4 explained it, is a mixture of considerations, industry  
5 interest, state input, geological input and environmental  
6 considerations, and if the geological-industry level of  
7 interest is so low that the tracts don't appear to be promis-  
8 ing, than I take it it is really not necessary to weigh it  
9 against the environmental impact of those tracts?

10 MR. LIKE: Objection, leading obviously.

11 MR. HYMAN: It is not so obvious.

12 MR. LIKE: He is putting words in her mouth.

13 MR. HYMAN: You have been doing it all through  
14 the trial.

15 Q Would you care to comment on the interplay of  
16 those factors, as they pertain to those westerly tracts?

17 A Right. The environmental division prepares  
18 environmental data of the entire call area and even further  
19 into shore. At the manager's briefing, where the nominations  
20 are presented to him, the environmental information is also  
21 presented. After the environmental information is presented,  
22 such as commercial fishing, the nominations are superimposed  
23 on that particular resource portrayal, and we look at the  
24 areas of high industry interest and geological survey about  
25 where there's oil and gas, and relate that to the environmental



1659

conflicts in that area.

Q So the conflicts arise only after you have identified a geological area of interest to industry and USGS?

A Right.

Q And it is at that point that you would consider the tradeoffs?

A For individual tract selection.

Q It is for that reason that you never had to get to that point with respect to these two westerly tracts?

MR. LIKE: Objection, leading the witness again.

THE COURT: I will permit it.

Go ahead.

A The areas that were not selected, generally were not high-interest areas, either through information from industry that said, "We think this has oil and gas" or geological surveys saying, "We think we have oil and gas." We did specifically delete some tracts that were high-interest tracts, but that also had environmental information that would say "Stay away from these." So that's where we get from the environmental end what to get rid of.

MR. BRUCE: That is all I have.

MR. KAUFMAN: No questions.

## CROSS-EXAMINATION

1660

BY MR. LIKE:

Q What tracts did you discover presented a conflict in the sense that the industry interest in bidding for those tracts was high, but at the same time there were environmental situations that conflicted with the industry's interest?

A I can't show you specifically on this map, because I don't recall the specific lots.

Q Can you give me -- can you point out on the map the general area in which those tracts were located, without pointing out the specific tracts?

A Well, one that I know of for sure that is shown by this --

MR. LIKE: Could the witness have a colored pencil and may I have her mark with a circle the one general area in which there was a conflict between industry interests and environmental consideration?

A As to this particular area, you might dispute whether it was an environmental consideration or not. It is right here where almost the entire block is covered by unexploded --

Q Undetonated explosives?

A That is correct.



1661

2

Q The crimson circle?

3

A Other than that, the Atlantic Offshore Fish and

4

Lobster Association identified some 71 tracts that they

5

preferred we do not lease at this time. Mostly along the

6

canyon area -- the 200 meter line where you drop off.

7

Q You are identifying an area east of the violet-

8

colored blocks?

9

A Yes, I can't recall how many of those 71

10

conflicted with high industry interest or geological survey

11

interest.

12

Q Who did the balancing of industry interest as

13

against that of the fishermen to delete those from the tract

14

selection process?

15

A At the field level, the manager of our office

16

did.

17

Q Mr. Basile?

18

A Right.

19

Q He is by profession an oceanographer; is that

20

correct?

21

A I don't really know.

22

Q You do not know what his phase of training is?

23

A His background is in marine biology.

24

Q I see.

25

Was there a set of standards, to your knowledge,

1  
2 in writing which Mr. Basile consulted in arriving at his  
3 decision to delete the tracts that have been recommended  
4 against selection by the fishing interests?

5 A I'll need that repeated.

6 (Question read.)

7 A No specifics. We had tract selection guide-  
8 lines from our Washington office that said, "Environmental  
9 considerations were to be mixed with industry interests,"  
10 but there was no formula.

11 Q You testified that the call for nominations was  
12 made in March of 1975; is that correct?

13 A Correct.

14 Q And is it true it was in March of 1975 that  
15 requests for proposals were issued for the Mid-Atlantic  
16 baseline study?

17 MR. JENSEN: Objection. This goes outside the  
18 scope of the direct. There is no testimony about  
19 baseline studies from this witness.

20 MR. LIKE: This witness is testifying to the  
21 type of environmental information that was supplied  
22 by the Environmental Division as input to this process  
23 and she identified a process of mixing and overlays.

24 THE COURT: I will permit it.

25 Q Isn't that true, that the RFP's went out in



March of 1975?

A I don't know that they went out in March. They went out in the spring of 1975.

Q Isn't it true that in June of 1975, the BLM entered into a contract to employ the Virginia Institute of Marine Sciences to perform the Mid-Atlantic study of lease sale 40?

A Not specifically for lease sale 40.

Q Was lease sale 40 one of the areas to be covered by the VIMS contract entered into in June of 1975?

A Yes, the area tentatively selected for lease sale 40 was covered under the VIMS contract, as well as other areas.

Q There was no baseline study input that entered into the contract selection process, as you described it?

A Yes.

Q Is it true that there was no baseline environmental study input through August 1, 1976, the date that the sale took place?

MR. BRUCE: What is the reference for that question --

MR. LIKE: The whole selection process, the call for nominations to the holding of the lease sale in August of 1976.

2 A We received quarterly reports from VIMS.

3 Q But the data that was contained in the quarterly  
4 reports from VIMS was not used as part of the tract selection  
5 process, was it?

6 A You pointed out the contract was not let until  
7 June and that's when the contract selection process was  
8 conducted.

9 However, the question was about up to August 1,  
10 1976, and that was what I was answering.

11 Q Let's take the period between June of 1975  
12 when the contracts were selected, and May of 1976 -- let's  
13 back up a moment.

14 During that period, between June of 1975 and  
15 May of 1976, what inputs, if any, were received as a result  
16 of the mid-Atlantic sale 40 baseline study that was used as  
17 inputs in the drafting of the environmental statement to the  
18 final environmental statement?

19 MR. BRUCE: I object to that as beyond the  
20 scope of the direct. It was limited to explain the  
21 tract selection process, which as your Honor pointed  
22 out is a process that necessarily precedes the  
23 preparation of an impact statement, which in turn  
24 looks at those tracts selected for study. Mr. Like  
25 is trying to do with this witness what he did with



the other witnesses, to extend her testimony as to the impact statement, the baseline study program, and that particular question focusing so clearly as it does, to the period of the tract selection process is beyond the scope of the direct and I object.

THE COURT: I think that is so. Sustained.

Q There has been placed into evidence the letters of the State of Delaware and the State of New Jersey, received on June 2, 1975.

In the State of Delaware letter the Governor makes the following statement:

"We have diligently endeavored to inform ourselves concerning the detailed factors mentioned in the call for nominations as being pertinent to the selection of or avoidance of leased tracts. This effort has met with frustration, because we have found that much pertinent information is considered priority and is, therefore, withheld from us, because the few studies available are highly generalized and omit elements of concern, and because the principal impact in baseline studies of the Department of the Interior are only in their initial phase or are just being planned."

Do you know what the Governor is referring to when he says that the effort to obtain detailed information

2 has met with "frustration" because much pertinent information  
3 is considered priority and withheld from Delaware?

4 A Do you want me to give you my opinion?

5 Q Give me your opinion, please.

6 A I think he means instead of priority,  
7 proprietary.

8 The geographical study has seismic information  
9 that is not available in a general means to anyone that  
10 requests it. The information that is obtained through seismic  
11 surveys is handled through geophysical firms and kept in a  
12 proprietary nature.

13 Q And this information was requested by Delaware  
14 and refused because of its proprietary nature?

15 A I don't know in fact that Delaware asked for it.  
16 Because geological survey has contracted with or signs  
17 contracts to obtain the geophysical information, the contracts  
18 say that it will be kept in a proprietary nature. It honors  
19 those contracts.

20 Q Do you know what it means, "Because the few  
21 studies available are highly generalized and omit elements  
22 of concern"?

23 A No.

24 Q He also goes on to say:

25 "Because the principal impact and baseline



1 studies of the Department of the Interior are only in an  
2 initial phase or are just being planned," is he referring to  
3 the mid-Atlantic study as being in an initial phase?  
4

5 A I imagine.

6 Q He then goes on to say:

7 "Indeed, recognition of the need for additional  
8 data is inherent in the process of designing and funding  
9 further studies in the mid-Atlantic area. Just as it would  
10 not be proper to actually lease, without adequate information,  
11 it would not be appropriate to offer detailed comments  
12 without a better factual basis."

13 He then says: "The entire area of tentative  
14 lease sale 40 has potential of generating serious problems,  
15 environmental and socio-economic impacts both on and off  
16 shore must be thoroughly evaluated. Any action that would  
17 imperil the outstanding natural marine, estuarine, or land  
18 habitats, recreational areas or quality of life in Delaware  
19 or other parts of the affected region must be avoided."

20 Was any response made in writing to the letter  
21 from the Governor of Delaware?

22 A No.

23  
24 (continued next page)  
25

1  
2 Q Was there any further contact with him  
3 concerning the points that were raised by him in his letter?

4 A His representative attended the tract  
5 selection -- the formal field level tract selection, which  
6 was subsequent to the letter.

7 Q What was the date of the field meeting that  
8 you are referring to?

9 A Drayfus 1975.

10 Q Who attended that meeting in behalf of the  
11 Governor?

12 A Mr. Jordan, who is the State Geologist.

13 Q Did Mr. Jordan raise any concerns at that  
14 meeting in July of 1975, concerning the tract selection  
15 process?

16 A He was concerned about the two hundred meter  
17 line, the break between the shelf and the slope from a  
18 geophysical instability.

19 Q Was that his only concern?

20 A That was his only concern, that I can remember,  
21 that he expressed.

22 Q Did he make any recommendations concerning that?

23 A I don't think he did.

24 Q Was anything done to quash his concerns?

25 A As indicated, I believe, in the area of the



1  
2 faulting or the possible instability, that if tracts were  
3 selected in that area, they would get a thorough treatment  
4 in the environmental impact statement and if they were  
5 ultimately selected for leasing, and there were conditions  
6 that had to be safeguarded there would be stipulations to  
7 that effect.

8 Q Was the concern stressed by Mr. Jordan one  
9 that would be of importance in determining the routing of  
10 pipelines?

11 A Not that far out.

12 Q Of what relevance was his concern about the  
13 edge of the canyon to the whole process of leasing and  
14 development?

15 A I think from the exploration phase, whether it  
16 was risky to set up rigs -- platforms, right on the shelf  
17 area.

18 Q Was that concern addressed in the environmental  
19 impact statement?

20 A I believe it was discussed for the tracts --  
21 the very few tracts that were selected along that line. Most  
22 of them ended up being deleted.

23 Q The tracts that Mr. Jordan recommended be deleted,  
24 mostly were deleted?

25 A Not specifically because of that purpose.

1  
2 They were deleted more because of the combination  
3 of having lots production in those areas.

4 Q Were there any tracts that Mr. Jordan recommended  
5 be deleted, which were not deleted?

6 A He did not recommend any specific tracts  
7 one way or another. He did express concern for --

8 Q Were any tracts as to which he expressed  
9 concern ultimately included and not deleted?

10 A I'd have to look.

11 Q Would you, please.

12 (Pause.)

13 A No.

14 Q In the letter from the Governor of New Jersey,  
15 on page two, he makes the following statement:

16 "The Federal Government should possess the  
17 maximum information possible on the resources of  
18 the Continental Shelf. These resources, belong to  
19 the people of the United States and are vitally  
20 important to our nation's future. Yet the Federal  
21 Government continues to act as though the traditional  
22 private concerns of oil companies were the primary  
23 element in decision making. The obsession of the  
24 Federal Treasury for large, upfront bonus payments,  
25 continues to cloud rational choices among the options



1  
2 available to improve the management of continental  
3 shelf energy resources. The Federal Government  
4 continues to have an unconscionable lack of knowledge  
5 about the resources it sets out to auction off, and  
6 maintains byzantine secrecy concerning the little  
7 knowledge it has acquired. This secrecy interferes  
8 with its duty to maintain candid relations with State  
9 Governments and the public. The Federal Government  
10 continues to be satisfied with the role of the auctioneer  
11 at a sale where the buyers are far better informed  
12 than the seller."

13 How is this concern responded to, if at all  
14 by the Interior Department?

15 A We asked specifically for information to help  
16 the individual tract selection process and that statement  
17 did not help us in selecting one tract vs. a nother.

18 Q So you rejected that statement as not being  
19 relevant to your responsibility; is that correct?

20 A Not relevant to the tract selection process.

21 Q Incidentally, was there a presale evaluation  
22 placed upon the tracts that were offered for sale in connection  
23 with the resale 40?

24 MR. BRUCE: I object to that question. Mr.  
25 Like will start getting in the fair market value,

1  
2 which he claims is in the case. In any event, it is  
3 not part of the direct of this witness.

4 THE COURT: I will permit it. You may answer.

5 A Yes.

6 Q What was the dollar amount?

7 A I don't know. I have that information, but  
8 it is on a tract by tract basis.

9 Q Can you give us a rough estimate in terms  
10 of millions of dollars, subject to correction after you  
11 check your records?

12 A Five hundred million.

13 Q And that represented the Interior Department's  
14 evaluation for one hundred and fifty four tracts; is that  
15 correct?

16 A I am not banking my background on that answer.  
17 Whatever it was, it did represent the Interior's presale  
18 evaluation.

19 Q For one hundred and fifty four tracts?

20 A Correct.

21 Q Is it correct that which was ultimately leased  
22 was 93 tracts, right?

23 A Correct.

24 Q And the amount paid by the successful bidders  
25 was one billion plus?



1  
2 A Correct.

3 Q One billion --

4 A 1.1 billion.

5 Q So if your figure of five hundred million is  
6 the correct figure for the presale evaluation, then the  
7 Interior Department under evaluated the resources by half?

8 MR. HYMAN: Objection.

9 THE COURT: Sustained.

10 Q Let me put the question to you this way?

11 The presale evaluation of five hundred million,  
12 or whatever the exact amount was, was based upon U.S.G.S.  
13 estimate as to what the recoverable oil and gas was that was  
14 located in the tracts that were being offered for sale: is  
15 that correct?

16 A The value of it and also considering how much  
17 it would cost to develop and produce that amount of oil and  
18 gas.

19 Q That is correct?

20 A Correct.

21 Q So the figure that was placed, as the presale  
22 evaluation, was a figure arrived at by U.S.G.S. after making  
23 an analysis as to what the potential reserves were and what  
24 it would cost to produce them?

25 A Correct.

Gresham-cross

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q That estimate by U.S.G.S. was based upon certain information that it had obtained regarding the quantity of the resource; is that correct?

A Correct, as well as historical information from other leased areas.

Q Did U.S.G.S. have available to it at the time it made its presale evaluation, any information given by industry with respect to the probable reserves or resources located in the Sale 40 area?

MR. HUGHES: Objection. There has been no basis that this witness has anything to do with the evaluation. Her direct testimony -- she did not testify on direct and therefore there is no testimony that she had anything to do with the process of evaluation or prior to the bidding.

THE COURT: If you can answer. If you cannot, say you cannot answer.

A I know that geological survey has the same information that industry has, it buys that information.

Q And in this instance, I am talking about Sale 40, U.S.G.S. has bought information from industry; is that correct?

A From companies that do seismic work for oil and gas companies.



Q And it used that information that it purchased from companies doing seismic work, as part of the process in arriving at its prasaala evaluation?

A And it also contracted for its own seismic surveys.

Q It had its own seismic data and the data purchased from outside contractors?

A Correct.

Q Now, the Governor of New Jersey goes on to say:

"A Federal Government which appreciated the strategic and economic value of the potential oil offshore resources would not be asking the oil companies to tell it what to put up for auction. Instead it would be identifying to all potential explorers the job which it wanted done and would, indeed, be planning to do a portion of the exploration itself on an urgent and timely basis."

Was this position expressed by the Governor rejected in effect by the Interior Department?

MR. LAFITTE: I would respectfully submit this witness is not in a position to testify as to what the Interior's policies were or for what latter, what the purpose of the regulation --

MR. LIKE: This witness was the occupant of

Gresham-cross

1  
2 an important position. She was Chief of the Operations  
3 Division. She said her responsibilities went from  
4 the inception of the call for nominations, right up  
5 through the sale. They worked together with U.S.G.S.  
6 and I think she is qualified.

7 THE COURT: If she knows. If she does not know,  
8 say "I don't know" or "I can't answer in that form."

9 A That specific comment from the Governor of  
10 New Jersey, was not helpful to the tract selection process,  
11 that it was our responsibility at the time and to which  
12 that was a response.

13 Q All right then, the Governor goes on to  
14 say:

15 "A Federal Government which appreciated  
16 these values would be undertaking a reappraisal of  
17 its plan in light of the recently announced drastic  
18 downward revision by the U.S. Geological Survey  
19 of the potential resources of the continental shelf.  
20 This recent revision which brings the U.S. Geological  
21 Survey figures in line with the estimates of private  
22 oil companies and the National Academy of Science,  
23 raises the question of the price these very  
24 limited resources should be sold, when, and indeed  
25 whether they should be sold at all under the usual



1  
2 ground rules, since they may constitute a final  
3 strategic oil and gas reserve. The Department should  
4 at the least evaluate the option of exploring, and  
5 then setting aside these other continental shelf  
6 resources for future emergency use."

7 Did you find that statement by the Governor  
8 was of help to you in the tract selection process?

9 A No.

10 Q Continuing:

11 "A Federal Government sensitive to the public  
12 interest in rapid exploration of the continental shelf  
13 would drop the commercially oriented ground rules  
14 which hide essential information from the public by  
15 defining that information as a trade secret. It  
16 would disclose the information available to it as  
17 well as the interest expressed by various oil  
18 companies and others in one or another structure.  
19 Work on the new frontier of the Baltimore Canyon  
20 Trough including the first round of primary drill-  
21 ing, is far too important to be continued in accordance  
22 with the ground rules and timetables for the commercial  
23 auctions, carried out elsewhere in the past."

24 I take it you found that to be also a state-  
25 ment that was not helpful to you in the tract selection of

1  
2 process?

3 MR. BRUCE: I would object to that question.  
4 It is a subspecies of the same series of questions,  
5 all of which have nothing to do with the tract select-  
6 ion. It is the Governor of New Jersey's point of  
7 view. Mr. Like is using this as an opportunity to read  
8 all the statements into the record. The document is  
9 in the record and speaks for itself.  
10

11 THE COURT: I will accept the question if  
12 you can answer it. If you cannot, just say you cannot  
13 answer.

14 A That was not tract specific, so it wasn't  
15 helpful. If I remember correctly the entire letter was  
16 along that line and discussed leasing policy rather than  
17 tract specific information.

18 Q Incidentally, this letter went to Kent Frizzell,  
19 acting secretary at the time?

20 A If it says CC to Kent --

21 Q It's addressed to the "Honorable Kent  
22 Frizzell, Acting Secretary, United States Department of  
23 Interior."

24 A Ok, right. We get copies of the comments for  
25 the tract selection process.

Q The letter goes on to say:



1  
2  
3 "The invitation to bid should make it clear that  
4 the exploration of the area and the decisions on develop-  
5 ment of the area will be separate matters. A new  
6 regulation is needed to allow those successful in  
7 exploration to proceed to develop only after they  
8 have an approved plan of production drawn up with  
9 full participation by the affected States reflecting  
10 all onshore impacts and concurred in by the affected  
11 states."

12 Did you find that to be helpful?

13 A No.

14 Q You were asked earlier whether or not any  
15 of the comments reflected concerns as to onshore impacts  
16 that might be generated as a result of the tract selection  
17 process and ultimate development of this area. Wouldn't you  
18 say this statement of the Governor indicated a concern that  
19 the states had the opportunity to fully participate in the  
20 whole process of development and to concur in development  
21 before development takes place?

22 A My answer before was whether he had expressed  
23 concern of development of specific tracts.

24 Q You would acknowledge that this letter reflected  
25 a general concern that the onshore impacts be fully participated  
in, that the states have an opportunity to participate fully

1  
2 in the process of approving any development plans that are  
3 going to generate onshore impacts.

4 MR. HYMAN: Objection, your Honor. He is not  
5 using the letter for cross-examination. He is  
6 synthesizing the letter and posing a question to the  
7 witness, slighting the answer and the contents by  
8 taking generalities out of the letter and making it a  
9 specific question. I do not think that is proper, your  
10 Honor, even under cross-examination.

11 THE COURT: I will permit it. If you can answer.  
12 If you cannot, say so.

13 A The letter is a general expression of Governor  
14 Byrne's attitude about the leasing process.

15  
16 (continued next page).  
17  
18  
19  
20  
21  
22  
23  
24  
25



2 Q And as concerns that, the on shore impact  
3 be dealt with appropriately with the states having the  
4 opportunity to fully participate in the process of approval  
5 of development plans?

6 A I think he said, "production plans."

7 Q Production?

8 A Right.

9 MR. LIKE: I have no further questions.

10 MR. PICCIANO: I have a few.

11 CROSS-EXAMINATION

12 BY MR. PICCIANO:

13 Q You mentioned that during the tract selection  
14 process, you utilized the overlay system; is that correct?

15 A Yes.

16 Q By overlay system, I assume you mean for example  
17 in one overlay you would develop the environmental resource  
18 and marine resource?

19 A A specific area of interest such as commercial  
20 fishing or marine biology.

21 Q Can you tell me what environmental resources  
22 you identified specifically other than expressed by commercial  
23 fishing, if any?

24 A We had a presentation on geological resources,  
25 as well as hazards. The input is not just on environmental

concerns, it is also conflicting use.

1682

Q I would like to limit you to the environmental resources or to the marine resources. Among those resources that you placed -- I assume you identified them on an overlay and that the information given to you was from the commercial fishing industry ; is that correct?

A Commercial, national marine fishing service available literature.

Q Would you identify the specific types of information that you placed on this overlay?

A The one that I can recall of the several on the commercial fishing where indications of catch data over the area.

Q Catch data?

A Catch data.

Q What would that tell us?

A Where prime fishing areas are.

(Continued.)



2 Q Prime fishing area?

3 A Right.

4 Q And you place those areas, I assume, in some  
5 kind of a color overlay; is that correct?

6 A Right.

7 Q And you superimpose that with the nominated  
8 tract; is that correct?

9 A Correct.

10 Q O.k. Miss Grasham, can you tell me where the  
11 spawning areas are in the middle Atlantic, if any?

12 A I can't.

13 Q Don't you consider that your function in  
14 identifying the environmental marine resources to identify  
15 spawning areas?

16 A There is another division in our office  
17 responsible for that. My division is responsible for the  
18 nominations.

19 Q And you are in chief of operations?

20 A Yes.

21 Q And you didn't feel it's your responsibility  
22 to gather that information to put it within this overlay  
23 system?

24 MR. JENSEN: Your Honor, I object. That's not  
25 her testimony. She said she gathered the information.

2 1  
2 Q Do you have the responsibility to gather the  
3 information regarding the spawning area?

4 A My own or my division?

5 Q Yes.

6 A No. I consider it the responsibility of the  
7 environmental assessment division. And they did.

8 Q In other words, are you saying, then, that  
9 this was considered in the overlay system?

10 A Yes.

11 Q Will you tell me or pinpoint where some of the  
12 spawning areas are?

13 A This happened too long ago for me to tell you  
14 about that. I am not a biologist.

15 Q I see. How about fish migration groups? Are  
16 you aware where the fish migration groups are within that  
17 area?

18 A I am not. I know where I can find it, but I  
19 am not --

20 Q Is it your testimony that this was included  
21 in the overlay as well as the spawning information?

22 A I don't recall whether it was or not.

23 Q Can you give me one specific -- I assumed you  
24 looked at this overlay; isn't that correct?

25 A Yes.



3

1685

Gresham - cross - Picciano

2 Q Could you give --

3 A In July of '75 I did.

4 Q Can you give me one specific instance and show  
5 me one specific tract where there is a spawning area? Just  
6 one?

7 A No.

8 MR. PICCIANO: I have no further questions.

9 MR. KAUFMAN: Your Honor, I have just one or  
10 two.

11 CROSS-EXAMINATION

12 BY MR. KAUFMAN:

13 Q Miss Gresham, at the time that the environmental  
14 assessment division was doing its overlay --

15 A Yes.

16 Q (Continuing) did they put the pipelines in  
17 under the overlay?

18 A From where?

19 Q From the tracts to be selected onto to where  
20 ever they would be going?

21 A There are no pipelines.

22 Q Did they put those pipeline routes in there?

23 A No.

24 Q Did they consider what the onshore impacts  
25 on that overlay -- did they consider what the onshore impacts

of pipelines would be at that time?

1686

A Specific pipeline routes were not discussed at that time.

MR. JENSEN: Your Honor, I have a couple of questions.

## REDIRECT EXAMINATION

BY MR. JENSEN:

Q After the tract selection process is completed, is there -- there is another process that involved the preparation of the environmental impact statement; is that correct?

A Right. The tract selection process is to develop tracts to be studied further in the environmental impact statement and much more extensively.

Q Well, is it possible the tracts can continue to be selected in effect after that point?

A The selection --

Q Or deleted?

A To my knowledge, tracts have never been added after that phase, but they have been deleted after the tract selection process.

Q Well, are you familiar specifically with the experience in other OCS lease areas in other parts of the country?



1687

Gresham - redirect - Jensen

5

2

A Yes. The Gulf of Alaska sale that was held last

3

April, there were several tracts. -- and I don't know the

4

exact number, -- that were deleted after the final environmental

5

impact statement was written.

6

Q Would you say that a significant percentage of

7

the tracts were deleted as a result of the environmental

8

impact statement?

9

MR. PICCIANO: Objection to relevancy.

10

What is a tract deletion in the Alaskan situation

11

have to do with tract deletions here? They are two

12

entirely different sets of circumstances.

13

THE COURT: I will permit it. It is an

14

indication of the nature of the process.

15

THE WITNESS: It was a significant number, right.

16

Q And which such tracts have been deleted in

17

lease sale 40 if it had been deemed appropriate after the

18

conclusion of the EIS process?

19

MR. LIKE: Objection. That calls for Mrs.

20

Gresham to testify as to the subjective judgments

21

engaged in, if any, by the Secretary of the Interior

22

or in the process of deciding which tracts to ultimately

23

sell.

24

THE COURT: I take it, you mean at field level?

25

Q Did you have the power to recommend --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Gresham - redirect - Jensen  
MR. JENSEN: Yes.

Q (Continuing) completion of the EIS process that additional tracts be deleted because of what surfaced?

MR. LIKE: Again, objection. The letter that Mr. Kaufman has repeatedly referred to and called to your attention the data which set forth the basis for the Secretary's decision. There is nothing in that letter as to recommendations coming from Miss Gresham or anybody in her office as to the tract deletion or selection process.

THE COURT: Well, the question is whether she could have written such a letter.

MR. LIKE: He's asking, would he -- would the Secretary have deleted the tract if there had been problems.

MR. JENSEN: I will withdraw the question. I think the point has been made. I don't want to belabor it.

THE COURT: No points are made by questions.

MR. JENSEN: Well, I think that the experience that she has testified to in the other areas is self-explanatory.

I have no further questions.

MR. KAUFMAN: Just one thing, your Honor.



7

1

2

## REXCROSS-EXAMINATION

3

BY MR. KAUFMAN:

4

5

6

7

8

Q As I understand it, then, what you are saying is because it's a deletion process that takes place, and what you said before, the pipelines were not involved in that, consideration of pipeline routes did not affect the tract selection process; is that correct?

9

10

A The specific tract selection process. That's right.

11

12

13

14

Q were the impacts of existing state laws or local zoning ordinances on the possible routing of pipe lines or of trakers resulting from the sale 40 process conceded during the tract selection process?

15

16

17

18

19

20

21

22

A Not with specific tracts.

MR. LIKE: Your Honor, may I inquire of Miss Gresham whether or not any tracts were deleted by the Secretary of the Interior after receiving the recommendations for tract selections from her office?

23

24

25

## CROSS-EXAMINATION

BY MR. LIKE:

Q

How many were deleted in the Washington office?

Gresham - cross - Like

1  
2 A I'd like to point out it wasn't by the  
3 Secretary. It was by the bureau of land management and  
4 geological survey.

5 Q All right.

6 A And I would say approximately 30.

7 Q Can you tell us which tracts were deleted,  
8 using this exhibit 52 in evidence as your map?

9 A Not specifically. But to continue out this  
10 area down in here.

11 THE COURT: Will you take a green pencil and  
12 mark that so the record is clear?

13 THE WITNESS: Yes.

14 MR. LIKE: The witness has indicated in a green  
15 curly line the area that contains tracts that were  
16 deleted in Washington by BLM.

17 Q Can you tell us what the basis was for the  
18 deletion?

19 A Yes. As much as I know about it, the Washington  
20 office consulted with other headquarters offices of other  
21 agencies. And there were national security reasons for deleting  
22 those tracts.

23 Q There were no tracts that were deleted for  
24 environmental reasons?

25 A No.



2 Q There were none? Is that what you are saying?

3 A At the Washington level?

4 C Yes.

5 A None from our recommendations. Correct.

6 MR. LIKE: Thank you.

7 MR. JENSEN: Your Honor, may I have --

8 THE COURT: Go ahead.

9 MR. JENSEN: I have one more question. Mr.  
10 Kaufman touched on a new area and I would like to  
11 cover it very briefly with the witness.

12 REDIRECT EXAMINATION

13 BY MR. JENSEN:

14 ) Q Mr. Kaufman asked you concerning the tentative  
15 tract selection process and the consideration of local land  
16 use and the possibility of the location of pipelines? Do  
17 you recall being asked that?

18 A Yes.

19 Q Can you explain why this kind of information  
20 was not considered in this tract selection process that we  
21 are referring to?

22 MR. KAUFMAN: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: As the specific tracts in the  
25 area -- that was highly nominated as well as indicated

1 by the geological survey as having oil and gas potential.  
2 One tract versus another would have no different or unique  
3 impact in terms of land use. We did consider on a general  
4 basis where the refineries were, the way that land is used  
5 in the coastal area, but it was not that much of a help in  
6 selecting specific tracts.  
7

8 We also knew that the environmental impact  
9 statement would discuss the use of pipelines or tankers  
10 and that ultimately there will be a pipeline management  
11 corridor studies if in fact anything is discovered out there.

12 We had a brief report, status report on the  
13 different stages of development in the coastal management  
14 plan. And at that time no state had a plan under implementatio  
15 that specifically included on shore facilities.

16 Q Had you known about the local land use, let's  
17 say, along the coast of New Jersey, would it have affected  
18 your decision in the tract selection process?

19 A The land use?

20 MR. KAUFMAN: Your Honor, I object to that.  
21 That's a double hypothetical.

22 THE COURT: I will allow it.

23 THE WITNESS: We did have -- we did know about  
24 the land use pattern in terms of recreation, open,  
25 undeveloped. However, it was not that helpful in the



11

Grasham-redirect-Jensen

individual tract selection process.

MR. JENSEN: I have no further questions.

THE COURT: I have a few questions.

As I understand this, then, you were privy to the Washington discussions which eliminated some of these tracts? Were you present during those discussions as the New York representative?

THE WITNESS: No, I was not.

(Continued.)

1 THE COURT: But you were privy to it indirectly?

2 THE WITNESS: Right. By phone call.

3  
4 THE COURT: Were there in Washington considera-  
5 tions of the pipeline possibility or the tanker  
6 possibility in the elimination of some of the tracts?  
7 I am particularly referring to the wavy green lines.  
8 That was the bulk of the elimination?

9 THE WITNESS: That was where all of the  
10 elimination occurred.

11 THE COURT: That was not due to any pipeline  
12 consideration?

13 THE WITNESS: No. I don't really know the  
14 specific --

15 THE COURT: Well, don't tell me. If it's  
16 national defense, I know you wouldn't tell me even  
17 if you knew.

18 I take it, neither you nor Washington  
19 considered the applicability of the local laws in  
20 making these selections for tracts for possible  
21 leasing.

22 THE WITNESS: Not for specific tracts. Correct.  
23 We had presentations on land use on onshore impacts.  
24 But those were more generalized than applying them to  
25 specific tracts that might be selected.



1  
2 THE COURT: Those purple tracts with the circle  
3 in them, those were tracts on which bids were made?  
4 But you rejected them? Why were they rejected? Do  
5 you know?

6 THE WITNESS: Insufficiency of bids.

7 THE COURT: No environmental practice?

8 THE WITNESS: No.

9 THE COURT: No pipeline practice?

10 THE WITNESS: No. They were each rejected  
11 specifically for insufficiency of the cash bonus bid.

12 THE COURT: No local law practice?

13 THE WITNESS: Correct.

14 THE COURT: Now, did you consider after the  
15 elimination of that substantial acreage shown by the  
16 wavy green lines that the non-contiguous nature of the  
17 tracts proposed for leasing as well as the elimination  
18 of roughly half of the lowest of the groups might make  
19 it uneconomical to transport oil from any of those  
20 groups of tracts?

21 THE WITNESS: We won't know what the economics  
22 are until we get out there and explore. But it was  
23 not felt that the elimination of that portion of the  
24 entire tract selection recommendation would make  
25 pipelines uneconomical.

1  
2 Q But you have favorably good estimates? Whether  
3 they prove to be wrong ultimately or not isn't important.  
4 You had an estimate of roughly \$500 million. So you knew,  
5 did you not, what was to be expected from the various areas?  
6

7 A Okay. That 500 million was for the 154 that  
8 were ultimately offered.

9 THE COURT: Didn't you have some idea where  
10 the maximum possibilities were with respect to oil  
11 recovery and gas recovery based on the geological  
12 material?

13 THE WITNESS: Of those -- within those 154,  
14 very roughly it was in the center of each of those  
15 areas.

16 THE COURT: Well, for example, did you consider  
17 from the point of view of oil spills that it might be  
18 best to have the contiguous area -- apparently, the  
19 most of the areas was the one for the northeast. Was  
20 that your maximum bid? Where -- which was the tracts  
21 for which the largest amount was bid?

22 THE WITNESS: I believe it was in this area  
23 down in here.

24 THE COURT: On the shelf?

25 THE WITNESS: Well, somewhere in that 170-mile  
bid. It wasn't all over on the shelf, but in this area.



1687

Gresham-redirect

THE COURT: To the north?

THE WITNESS: To the north of the --

THE COURT: Of that middle section?

THE WITNESS: Somewhere in this.

THE COURT: Near the red circle?

THE WITNESS: Yes.

THE COURT: Well, did you consider that this was an economic unity in that the pattern of offers and pattern of exploitation might have made it easy to use pipelines or more difficult if you spread it out or you concentrated it?

THE WITNESS: It's quite concentrated.

THE COURT: Well, spread over a couple of hundred miles, isn't it?

THE WITNESS: In terms of how pipelines can be connected, it is not that far apart. The tracts are not that far apart.

THE COURT: You can see that if there is enough from each one of those four discrete areas shown in purple, that all of them will be connected by pipelines.

THE WITNESS: Or you could have production from the top two areas in one pipeline and these two in another. Or it could be all be drawn offshore and brought together in one or two pipelines.

BEST COPY AVAILABLE

1  
2 THE COURT: Or you might have pipelines from  
3 the northeast and the others coming by tanker.

4 THE WITNESS: I doubt it. If you have a pipe-  
5 line out there, one coming on shore, that others would  
6 be brought by tanker. I don't really know. If there  
7 is a very small amount of production in one of those  
8 areas, there is a possibility.

9 THE COURT: But your consensus is they are  
10 going to use the pipeline and it will connect all of  
11 those areas, and they are not so far apart that that  
12 would be uneconomical?

13 THE WITNESS: Right.

14 THE COURT: Were you in any point in the program  
15 selection that you were participating in informed of  
16 the decision to lease for exploration and production  
17 as a unit rather than for exploration separate from  
18 production?

19 THE WITNESS: The leases are for exploration  
20 and development and production.

21 THE COURT: Yes, I understand. At what point  
22 in the process were you informed that the offer was  
23 going to be made for all three of those things as a  
24 unit without splitting the --

25 THE WITNESS: That's the way it has always been



1689

Gresham-redirect

done.

THE COURT: I see.

THE WITNESS: So it was no change.

THE COURT: Were you informed that we were going to do as we always have done?

THE WITNESS: That's what the lease said, the lease form that the company executed and we executed.

THE COURT: I understand. And on the OCS Land Act -- the OCS Land Act requires that?

THE WITNESS: I believe it does. I couldn't quote you on it.

THE COURT: But your assumption right from the outset was that there could be no separating of the exploration and production?

THE WITNESS: Into two separate leasing?

THE COURT: Yes.

THE WITNESS: That would require legislation, I think.

THE COURT: So you never considered as a possible alternative that anything -- anything but a selection of tracts, nomination of tracts, bidding on tracts and leasing on tracts that combined all of these three? Exploration -- what was the second one?

THE WITNESS: Development and production.

1 THE COURT: In one lease.

2 THE WITNESS: Correct.

3 THE COURT: And that operation, therefore, was  
4 never considered as a practical alternative because  
5 this was the way it was going to be shown.  
6

7 MR. HYMAN: Your Honor, may I interrupt and  
8 interpose an objection to the Court's question? The  
9 Court covers the -- the EIS covers exploration,  
10 separation, production and all these things that come  
11 up. This lady over here is just concerned with one  
12 item, I think. I don't think it's fair to ask her  
13 that kind of question. As I said when we first started  
14 this case, your Honor, it is in the EIS.

15 THE COURT: Yes, I know. I know it's in the  
16 EIS. But I want to know what was in the mind of the  
17 people that were making the decisions here.

18 MR. HYMAN: She didn't make -- she isn't  
19 ultimately the one responsible to make the decision.

20 THE COURT: I understand. But the work that  
21 is done by important people at a field level and other  
22 levels up to the Secretary can't be ignored.

23 MR. HYMAN: That's right.

24 THE COURT: If they are operating under an  
25 assumption which is right or wrong -- that is, what is



1701

Gresham-redirect

being done here -- and whatever is in the EIS --

MR. HYMAN: That's correct, your Honor. But the point is, when you ask her a question like that -- she's not a lawyer -- about separation and production from exploration.

THE COURT: You object to the question?

MR. HYMAN: Yes, your Honor.

THE COURT: Objection sustained.

M E. HYMAN: Thank you, your Honor.

THE COURT: Any further questions?

Thank you very much, na'am.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Next witness, please.

MR. BRUCE: The intervenor NOIA calls  
Dr. David Hault.

Does your Honor want to take a recess now?

THE COURT: No. I have to break at 4:30 for a little while because I have a meeting of the judges on criminal sentencing. We have a panel on sentencing. That will take about twenty-five minutes. I think that would be a better time to break.

1 article summarizes one would expect the learning processes to  
2 continue, number one, as long as the product is standard.  
3 Number two, as long as capital is invested in upgrading the  
4 facilities and as long as the scale of operations increases  
5 with time. There's a batch of literature, of course, on this  
6 subject. From these references I think it's a very reasonable  
7 conjecture that the learning processes would occur in the  
8 off-shore development.  
9

10 Q Dr. Hoult, aside -- in general, the conclusions  
11 you've reached, looking at the Millford Haven data, the more  
12 general theoretical conclusion based on the learning processes  
13 as a whole, are you familiar with developments in what's  
14 called hardware; that he did explain the applications, or  
15 rather the fact of a learning process in tankering of oil  
16 over the last few years?

17 A Yes, I am. For that I would -- for the recent  
18 technological development which I know about, I refer to this  
19 document --

20 Q Without referring to the document, based upon  
21 your knowledge as an expert in this area, what would you  
22 generally describe?

23 A Very simply, the marine navigation and radar  
24 system and on-board computers for ships are undergoing a vast  
25 and substantial improvement at this time. The problem is



1 similar to the landing of large aircraft, the berthing of  
2 large ships. I expect, as we go down into the future, these  
3 systems will be put on ships that are regulated and that  
4 operate in U.S. ports.  
5

6 Q Do you have any approximation -- very general  
7 terms -- the cost of these systems?

8 A I'm not an expert on the cost, but I do know  
9 it's at least close to off the shelf item. Some of my clients  
10 have gotten bids from marine electronics firms to install  
11 equipment on ships and although I'm not privy to the structure  
12 of those bids, it's very clear they're not a major component  
13 of cost in the operation or in the cost of the price of the  
14 ship.

15 Q By off the shelf, you refer, I take it that is  
16 it's taken as a stock item, not specially engineered?

17 A There are some specially engineered, just as  
18 one does special instrument landings in airport, but they do  
19 not appear in my knowledge to be unique systems.

20 Q Are there any particular features of a system  
21 of tankage of OCS oil to on-shore points in the United  
22 States which will bear upon the learning processes that might  
23 be anticipated in that system as against an international  
24 system of a different sort?

25 A First of all, as I understand it, the ships that

1 would tanker the oil would be forced by law to be U.S. built  
2 ships, U.S. bottoms; that the off-loading and the on-loading  
3 processes and the crudes would be subject to regulation,  
4 either by State or Federal people. Because U.S. bottoms,  
5 as far as I can see, are more expensive, it's very likely, as  
6 far as I can determine, that the ships would be dedicated to  
7 that purpose. I think when you have a short transit -- by  
8 marine standards -- it is a short haul to port, with repeated  
9 passage and completely regulated system, that one expects the  
10 end result to be a safer system.

11 Q Safer than what, Dr. Hoult?

12 A Safer than the worldwide transport records,  
13 including ships from Liberia, so on. They call on many dif-  
14 ferent ports in many parts of the world. The crews are not  
15 regulated, either.

16 Q Would it be easier to design by -- by easier  
17 I mean cheaper -- to design and install these special navi-  
18 gation aids if you were on a dedicated route, so to speak?

19 A To give you some idea, I'm not exactly sure  
20 how far off-shore these sites are, but in the Eastport situa-  
21 tion --

22 MR. BRUCE: If I might interrupt, the witness  
23 is referring to T-5 E. Here, Dr. Hoult's scale  
24 representing 50 miles.  
25



Hoult-direct-Bruce

1  
2 A It's about 50 miles off-shore. 50 miles is  
3 within the range of a series of radar beacons. If you put radar  
4 beacons on the tours and on the shore and you had an on-board  
5 computer on board the ship, you could probably get an accuracy  
6 of one foot or so where the ship is at any state.

7 Q In detailing these features of an anticipated  
8 system, the learning processes, the technological development  
9 you described, how would you characterize the conclusions  
10 stated in the impact statement as to tankerage? Would you say  
11 they are optimistic; that is to say that they understate the  
12 amount of oil spilled; would you say that they are just about  
13 right in that they properly state the amount that might be  
14 spilled, or that they are pessimistic in the sense that they  
15 overstate the amount of oil that might be spilled by tanker-  
16 age over the life of the expected development?

17 A I think there's two things about that. I think  
18 it's very likely that these are pessimistic numbers. The  
19 other thing I would say is that people often make this state-  
20 ment comparing the rate of spill from tankers and other  
21 sources such as pipelines and so forth. From my analysis of  
22 these 44 cases on which -- of modern ships in which the spill  
23 rate is based, I don't think one can use the numbers properly  
24 to conclude either that pipelines are safer or less safe than  
25 tankers over the lifetime of the lease. They may be or may

XX  
9a

Hoult-direct-Bruce

not be, but I think it depends more on the relative greater  
learning period for the ships and the pipelines than it does  
upon the statistical record to date.

(Continued on next page.)



Hoult-direct

1  
2 A They're qualitatively and quantitatively  
3 similar. Some of the curves are identical. The Figures  
4 10A and 10B in the EIS have their counterparts in the  
5 Davanney study. The figures in the Environmental Impact  
6 Statement, if I read them correctly, are more pessimistic  
7 than the ones in the Nassau-Suffolk County document.

8 MR. BRUCE: I have no further direct of  
9 this witness.

10 THE COURT: Any further direct by the  
11 Government?

12 MR. HYMAN: No, your Honor.

13 THE COURT: I have to break now.

14 We will probably have the cross when I get  
15 back. It will be about ten to five.

16 (Recess taken)

17 CROSS EXAMINATION

18 BY MR. KAUFMAN:

19 Q Mr. Hoult, I don't know that we've met. My  
20 name is John Kaufman. I represent the Natural Resources  
21 Defense Council.

22 First of all, are you familiar with the size  
23 of tankers that are likely to be used, if tankers are used  
24 at all in the OCS operation in the mid-Atlantic?

25 A Not in detail, no.

Hoult-cross/Kaufman

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Do you know at all?

A As I understand, they're bigger than 20,000 tons and probably up to maybe-- I don't know.

Q Do you have any idea?

A They're certainly not 150,000 dead weight tons, because the draft of the harbor in New York and Delaware-- I think the largest ships landing in Delaware around 65 or 70.

Q It was your testimony that it was the big tankers that the curve applies to.

A In that chart on Milford Haven--

Q What I asked you, is it your experience that the learning curve, the--

A Yes, I'm sorry. Let me qualify that. The learning curve process from the data I analyzed looked like it commenced about the time in Milford Haven that they began to land the big ships.

Q Those would be the 100-and 150,000 tons?

A Correct.

Q If you would look at page 51 of the Volume II of the impact statement--

A Is that the green or yellow?

Q The yellow, the mid-Atlantic.

A I see it says 30 to 70.



1709

Hoult-cross/Kaufman

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q It says the relatively small size of ships that would be employed, 30,000 to 40,000 dead weight tons or smaller.

A Yes.

Q Is that about the same size as the Argo Merchant was?

A I think it was bigger.

Q It was 29,000 tons.

A I thought it was bigger.

Q And the learning curve did not apply to the Argo Merchant?

A It does, but it's an older ship.

Q Older ships are more likely to have accidents?

A What I was saying--

Q Just answer the question. Older ships are more likely to have accidents than newer ships?

A I don't think it's true without qualification.

Q Hasn't it been experience that the accident takes place in older ships more than newer ships--

A In past experience.

Q Up until today.

A Yes.

Q To your knowledge are the smaller ships, these ships of under 70,000 tons, the older ships?

A Well--

1  
2 Q Yes or no, to your knowledge is that true?

3 A I'd have to, no, there are modern under 70,000  
4 dead weight tons.

5 Q That are being built now?

6 A I'm not an expert on what ships are being built.  
7 I think some are.

8 Q Would you agree with me the greater percentage  
9 of tankers built in the last five years are tankers of a  
10 100,000 tons and up?

11 A Yes.

12 Q Much the greater percentage; is that correct?

13 A I'm not sure of that. It's certainly the  
14 greater percentage in volume capacity, whether it's the  
15 greater percentage in number, I don't know.

16 Q And that being the case, isn't it true that  
17 these smaller tankers then would be the older ships  
18 because the newer ones are the bigger ships?

19 A If by smaller you mean less than 20 dead weight  
20 tons, I would agree with you--

21 Q Even less than 50.

22 MR. BRUCE: Could the witness finish his  
23 answer.

24 THE COURT: Yes. Please don't interrupt the  
25 witness.



1711

Hoult-cross/Kaufman

1  
2 A My understanding is that 65 or 70 thousand dead  
3 weight tons is the largest ship that you could get into the  
4 Delaware Philadelphia and New York area, and I'm not an  
5 expert on this, that some modern ships of that size have  
6 been built.

7 Q Within the last five years?

8 A I believe so, but I'm not an expert.

9 Q You don't really know, do you?

10 A I do believe that ships-- There are very  
11 few ships indeed built now that are less than 20,000  
12 dead weight tons. '

13 Q Do the requirements for segregated ballast  
14 and double-bottom hulls reduce tanker spillage?

15 A The requirement for segregated ballast,  
16 that is load on top, certainly does, at least to my knowledge.

17 Q How about double-bottom hulls?

18 A I don't know.

19 Q You don't know whether double-bottom hulls?

20 A Improves it or not, I don't know.

21 Q Do the existing Coast Guard Regulations  
22 require segregated ballast for tankers of under 30,000 tons?

23 A I don't know.

24 Q Do you know whether or not they apply to old  
25 ships or just the new ships being built?

1  
2 A I don't know, except I do know that the  
3 double bottom requirement has not been applied.

4 Q So that they don't require double bottoms  
5 at all?

6 A I don't believe so.

7 Q Load on top requirements is only for ships  
8 being built beginning January 1977; is that correct?

9 A I don't know.

10 Q Do you know if existing statutes require the  
11 United States tankers be used for operations outside the  
12 12-mile limit?

13 A Well, I'm not a lawyer, but I -- it's my  
14 understanding and undoubtedly it's limited, that when you  
15 transport materials on the continental shelf like oil, to  
16 United States ports, that you have to use a United States  
17 bottom.

18 Q Where did you get that understanding from?

19 A Just general conversation.

20 Q From whom -- with whom?

21 A I don't know.

22 Q Are you familiar with the Jones Act?

23 A No, I'm not.

24 Q Did you have any conversation about this with  
25 Mr. Bruce or with Mr. Hyman before you came on the stand



1  
2 today?

3 A No.

4 Q Did they tell you at that time that this was  
5 a requirement?

6 A I don't remember that they did one way or  
7 the other.

8 Q You said that it was your understanding that  
9 boats had to be required -- that this had to be done on  
10 United States bottoms.

11 A Yes.

12 Q What's the basis of that understanding?  
13 Gossip that you picked up?

14 A General information.

15 Q You have never made any analysis of it?

16 A If you gave me the Jones Act, sir, I am not  
17 sure that I could read it intelligently.

18 Q Do you know in fact ships carrying oil from  
19 the Gulf Coast outside the 12-mile limit, into United States  
20 ports, is carried on foreign-flag tankers?

21 A Do I know that?

22 Q Yes, did you know that?

23 A No, I didn't.

24 Q If that were true, would that change your  
25 statement?

1  
2 MR. BRUCE: There is no basis in the record  
3 for that hypothetical.

4 THE COURT: I don't see any point to it.

5 MR. HYMAN: Do they condemn this witness for  
6 talking to a guy that told him something--

7 THE COURT: Excuse me, Mr. Hyman. I don't  
8 want argument when I have ruled.

9 Q The learning curve that you talked about  
10 before, the analysis that you applied refers to tankers and  
11 terminals?

12 A Yes.

13 Q It did not apply to tankers on the high seas?

14 A Yes.

15 Q Do you have any evidence that the learning  
16 curve applies to tankers on the high seas?

17 A No.

18 Q Have you done any analysis of tankers on the  
19 high seas?

20 A No.

21 Q Do you know in fact, for example, in 1975,  
22 there was a record tanker spill of both numbers of tankers  
23 and oil spilled in the world?

24 A I'm aware that that was true.

25 Q Do you know also that in the first nine months



Hoult-cross/Kaufman

of this year that that record was broken by twenty percent?

MR. HYMAN: Objection, your Honor, facts subsequent to the final EIS, not before the Administrator.

THE COURT: It's appropriate in attacking the credibility of a witness.

Q Do you know that?

A I accept your statement, but I would comment that I think it's a very plausible long-term statement that the learning process would occur on the high seas.

Q Despite the fact that it has been going the other way with respect to tankers?

A It can for short periods of time. I doubt it will for a long period of time.

MR. KAUFMAN: I have no further questions.

CROSS EXAMINATION

BY MR. LIER:

Q Would you agree, Dr. Hoult, that most large tanker spills occur within fifty miles of land?

A I think that is correct.

Q Were the statistics which you analyzed average statistics or were they broken down to indicate probabilities within, let's say, fifty miles of a coastline?

A Can I— Let me check.

Holt

A No sir. My only comment was based on the fact that if you use U.S. bottoms there, I felt they had to build new ships on this particular cite.

Q When you talk about a learning curve, am I correct that if a learning curve applies to new tankers which will be able to incorporate in their design and in their hardware the lessons and the experience of their predecessors: isn't that right?

A Or in their modification.

Q That's right. So the learning curve is closely correlated with new tankers?

A Or new navigation gear.

Q All right. Let's separate that out now.

A O.K.

Q When you are making estimates projecting into the future, the effect of the learning curve, aren't you making assumptions as to the extent of new tanker construction which will be learning from past mistakes, from past experience?

A Or new navigation?

Q Or new navigation, right.

A New navigation. Certainly.

Q All right. Now, if you don't have -- withdrawn.

To the extent that you do not have any significant increase in new tanker construction, then that will have an



5

cross - Like

Holt

effect upon the learning curve, wouldn't it?

A Presumably it would.

Q And you are not in a position to make any reliable estimates of new tanker construction, are you?

A I didn't say I was.

Q All right. With respect to the older tankers that are now in operation, as they age, is it correct that they deteriorate?

A I think that depends on how they are maintained.

Q All right. If they are not maintained properly, they deteriorate?

A Yes.

Q If they deteriorate, then there is a tendency to spill more oil; is that correct?

A I think so.

Q All right. You would correlate the deteriorating the aging, the tankers that are not properly maintained with an frequency of spills?

A I think that's a positive assumption.

Q All right. Have you made any estimate or attempted to plug into your statistical analysis the effect of aging and deterioration or ill-maintenance of existing tankers of 20,000 dead weight tons?

A Will you state it again?

cross - Like

Holt

MR. LIKE: Will you please read it?

(Record read.)

THE WITNESS: No, I haven't. I don't know of any such record.

Q If such an analysis were made, is it possible that it would require a modification of any statistical findings attempting to project into the future the frequency of tanker accidents and the volume of oil spilled as a result of these tanker accidents?

A Will you read it again?

(Record read.)

THE WITNESS: I think the answer to that is yes. For example --

Q All right.

A For example, in aircraft, past accidents and past maintenance schedules are used to determine how reliable the air transport is. And the regulations are modified as time goes on to reflect that. That's an example of how the learning curve process works in that industry, I suppose.

Q Thank you. I now read to you from page 170 of the CEQ report, volume 1.

"Tankers are likely to be used in the Atlantic and in the Gulf of Alaska during the early stages of field production before pipelines are laid or on a continuing



25                    A                    I think so.

MR. LAFITTE: I expect direct examination will take twenty minutes or so. I would like to complete this witness this evening.

THE COURT: So would I.

DIRECT EXAMINATION

BY MR. LAFITTE:

Q Would you state your name and residence?

A Yes. My name is Franklin Brunjes. I'm from Houston, Texas.

Q By whom are you employed and in what capacity?

A I'm employed by Shell Oil Company. I'm manager of land transportation planning for the company.

Q What are your responsibilities as a manager of land transportation for Shell?

A My responsibilities include the planning and development of all land transportation activities for the company, including pipeline, rail, truck, major activity that includes pipeline.

Q I'm going to show you what has been identified as NLIA or Defendant's Exhibit T-5D, and ask you if you can identify that as an accurate statement of your curriculum vitae.

A Yes, it is.

MR. KAUFMAN: I have T-5D, a list of United



1  
2 States petroleum imports.

3 MR. LAFITTE: This was marked by the Clerk,  
4 I believe. Perhaps it needs to be given a new  
5 number.

6 MR. KAUFMAN: Might I see that.

7 (Document handed to Mr. Kaufman.)

8 MR. LAFITTE: This was provided to counsel.  
9 I perhaps think we have an error.

10 MR. KAUFMAN: I saw that this morning.

11 THE COURT: Received.

12 Q Mr. Brunjes, did Shell Oil Company acquire a  
13 number of leases from the United States as a result of OCS  
14 Lease Sale No. 40, held on August 17, 1976, relating to  
15 the mid-Atlantic offshore area?

16 A Yes, I understand Shell was successful on  
17 twelve tracts. I believe those tracts are in the two areas  
18 that are closest to the shore, that upper area and the  
19 southerly area, six tracts in each.

20 Q You're referring to the chart that's on the  
21 board before the Court?

22 A Yes, I am.

23 Q Two areas that are shown in purple in that chart  
24 are you not?

25 A Yes, I am.

1  
2 Q Mr. Brunjes, prior to Shell's bidding for those  
3 leases, did the company study the economics and feasibility  
4 of transportation of crude oil produced from the Sale 40  
5 area to existing on-shore refineries.

6 A Yes, we did.

7 Q Could you describe the analytical work that was  
8 done by the company along those lines?

9 MR. KAUFMAN: If the Court please, I have  
10 absolutely no understanding of what this has to do  
11 with the impact statement and the adequacy of the  
12 impact statement. I object to it.

13 MR. LAFITTE: Your Honor, the Court has  
14 received testimony concerning-- from witnesses  
15 produced by NRDC concerning zoning restrictions,  
16 concerning constraints on land use for the purpose,  
17 of showing, I take it, that the Secretary was not  
18 in a position or did not consider accurately the  
19 feasibility of pipeline transportation of crude  
20 oil produced in this area.

21 THE COURT: Did this witness study those  
22 matters?

23 MR. LAFITTE: Yes, he did, your Honor.

24 THE COURT: I will take his testimony.

25 Try to fix the time of the study.



1  
2 MR. LAFITTE: My question was prior to the  
3 bidding by Shell, and his answer was yes.

4 MR. LIKE: Excuse me. I believe the date  
5 should be more precisely defined to make sure it  
6 happened before May, 1976, your Honor, because what  
7 took place after May 1976 your Honor has ruled out  
8 of this case.

9 THE COURT: No, in this case I'll take it .  
10 None of this man's studies were made available to  
11 the Secretary so that cutoff data really has no  
12 relevance on this point.

13 MR. LIKE: Then it's an event which took place  
14 after May of 1976 and it falls under the category of  
15 current events which your Honor has stated you  
16 could not receive.

17 THE COURT: I take it he's going to testify  
18 that all of these matters that have been talked  
19 about can be voided; is that right?

20 MR. LAFITTE: You're correct. This is not a  
21 matter involved in the so-called cutoff date.

22 THE COURT: I'll take his testimony.

23 MR. LAFITTE: This is a question of fact;  
24 throughout this trial we have been dealing with  
25 evidence after this litigation begin.

1  
2 MR. LIKE: I must ask you, because I have a  
3 witness coming in tomorrow, and I don't know what  
4 this cutoff date means. If certain types of infor-  
5 mation can be taken, even though they relate to  
6 periods after the cutoff date, I would like to know  
7 that the guideline is as to the receipt of that type  
8 of evidence.

9 THE COURT: Why don't you listen to see what  
10 this witness is going to say? I suspect what he is  
11 going to say has nothing to do with the cutoff date.  
12 Let's listen.

13 MR. KAUFMAN: If what's available--

14 THE COURT: Excuse me. Let's listen to what  
15 the witness has to say.

16 A To answer your question: prior to the lease  
17 sale, during the period of February, March and April of 1976,  
18 the exploration and production division of Shell came to  
19 me for my group and asked us to develop and analyze the  
20 transportation feasibility and cost associated with this  
21 offshore lease that you talked about.

22 In doing so we developed a feasibility and  
23 cost study that involved pipeline routes to the shore and  
24 overland toward the Philadelphia area.

25 We also developed costs that had to do with



1 transportation by marine from this area into the Phila-  
2 delphia area.  
3

4 This activity involved calling upon the  
5 expertise of various segments within the company, our  
6 engineering organization who have had extensive experience  
7 in offshore pipelining; our marine organization, who is  
8 experienced in the marine matter; right-of-way groups,  
9 people of that nature.

10 Q Why was the cost information prepared  
11 based on transportation to the Philadelphia refining area,  
12 Mr. Brunjes?

13 A The Philadelphia area, as far as the Northeast  
14 is concerned, contains the largest concentration of refin-  
15 eries. I believe they have a capacity in the order of  
16 900,000 barrels a day to a million barrels a day capacity  
17 up there in the Philadelphia area.

18 This is much larger than any other area of  
19 the Northeast Coast.

20 Q Would you state to the Court the basic  
21 criteria or assumptions under which the cost information is  
22 developed.

23 A To do a study, first off, you-- One has to as-  
24 sume oil will be found and also where the oil would be found.  
25 We looked at several locations within that area.

1  
2 We looked at a range of production going  
3 from, say, 25,000 barrels a day up to 200,000 barrels a  
4 day.

5 We also had to assume how it would be developed  
6 and what the decline rate would be on the production,  
7 generally the life of the field.

8 We got that information from our explora-  
9 tion and production people. That kind of tells us where  
10 we have to start.

11 We also had to assume the quality of oil,  
12 whether it was pumpable or not, what its characteristics  
13 are.

14 We also had to assume there would be of a  
15 normal type oil that could be processed by existing  
16 refineries in the Northeast area and particularly the  
17 Philadelphia area.

18 Q You mentioned pumpability of oil. Do you  
19 mean pump from the ground or pump for purposes of  
20 transportation?

21 A Pumped for purposes of transportation.

22 Also, criteria that we live by, too, was,  
23 say, pipeline design or costing of pipeline that meets or  
24 exceeds all applicable or federal, national standards  
25 for pipeline design.



Also, we had to, in taking a look at the overland route, we took a quick look at the right-of-way availability, and we assumed that on the right of way that wherever possible that existing corridors would be used. In other words, railroad right of ways, along roads, utilities, easements, gas lines, electric lines -- that nature.

Q Are those the basic assumptions. Can you think of any others?

A No, I think that's the major ones. There were many others, but those were the major ones.

Q Mr. Brunjes, there's already mentioned the environmental impact statement, which shows the anticipation of the U.S.G.S. for expected daily production rates from the Sale 40 area. That shows-- This is the basis for my next question -- shows the range from 9,000 barrels a day to 320,000 barrels a day.

Using those production rates, can you summarize the results or analysis which was made, cost analysis made for the transportation of crude from the Sale 40 area?

A Over all, to summarize it very briefly, the pipeline transportation was less costly than marine transportation for those rates involved.

Q You're referring, are you, to direct route from the Sale 40 area to the coastline of what state?

1  
2 A To the coastline of New Jersey. Maybe I'd  
3 better explain. We looked at a routing that went from  
4 an offshore area and it went in toward the southern part  
5 of New Jersey and came ashore in the southern part of New  
6 Jersey and then transfers across New Jersey to the Phila-  
7 delphia area.

8 THE COURT: Would you give the witness the  
9 red pencil?

10 MR. LAFITTE: If the Court please, I have an  
11 exhibit prepared.

12 THE COURT: Let's see the exhibit. I want  
13 something visual. Where is the exhibit?

14 MR. LAFITTE: This is marked as Defendant's  
15 T-4W.

16 I have another copy. If you can't see this,  
17 I'll give you one.

18 (A chart is placed on the courtroom  
19 blackboard.)

20 (Continued on the next page.)



HS/flp.

Brunjes-direct

MR. KAUFMAN: Your Honor, I want to record our objection to this exhibit on the basis it was never shown to the secretary or considered by the secretary.

THE COURT: I understand that. I will take that into account. I would like to understand what this is all about. Mark it in evidence.

MR. LIXE: What is the number?

MR. LAFITTE: T4W.

THE CLERK: Defendant's exhibit T4W marked in evidence.

Q Now, to clarify the question that the Court asked: T4W shows a green line which is identified as Route #1. Is that the route itself that was used in the cost analysis that you have just discussed?

A It wasn't. The route that I just mentioned was a route from various areas out here. This area was one of the areas that we looked at. The routing from that area down toward about the Cape May Atlantic County borders, and then coming across to the Philadelphia area.

Q In a straight line to the Philadelphia area?

A In generally a straight line to the Philadelphia area.

THE COURT: That's Route 2 on this chart?

THE WITNESS: No, it is not. It is not indicated

on this chart, the route that I just referred to.

MR. LAPITTE: We can mark it. I wanted to clarify by question that question.

Q The green line which is route #1 is simply the straight line off the two points of the OCS 40 area and the Philadelphia refining area?

A Yes, it is.

In the study made prior to the lease sale, we looked at this routing like I said coming down toward southern New Jersey and across to the Philadelphia area.

THE COURT: Mark it in the chart.

Q Why don't you take a red pencil and mark that routing.

THE COURT: Give it a number, please.

THE WITNESS: Give it a number 1A?

THE COURT: If you wish.

THE WITNESS: This is the routing that we generally looked at. We were influenced by what appeared to be the availability of right of ways onshore that would lend itself to such general routing onshore. In the same analysis we compared this routing against routing of tankers -- let me verify it.

Q It is marked as Route 5 in the orange?

A Yes, we also compared it to another routing that



3

1

Brunjes-direct

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

is indicated at Route 2. That goes down around the lower part of Cape May, avoids the Atlantic seashore off New Jersey, and would then come ashore generally near the border of Cumberland County and Cape May County, and then proceed up to the Philadelphia area. Those are the two pipeline alternatives that we looked at and we compared them to Marine Transportation routes that would get up to the refineries by Delaware Bay.

Q This was done prior to the bidding by Shell for the sale for the lease?

A Yes.

Q Before discussing the other routes, I would like to ask you some questions about your analysis of those two routes, which are 1A and 1-- 1A and 2 on the exhibit.

A This study again was for the purposes of assessing leased bids. That's why the E and T Division came to us and so when we looked at trying to identify the capital costs and operating costs and other various cost elements that go into a long term transportation situation like this, we took those costs and we generally reduced them to the common denominator of unit cost of transportation over the life of the field, that we assumed in this study.

Q What was the unit that was used?

A Cent per barrel is what we reduced it to. The results to go into more or less a comparison of the routes and

Brumjes-direct

would like to refer to my notes to get it correct here.

Q Go ahead, sir.

A On the routing from this area going down one A to the Philadelphia area, and we assumed various levels of production like I said. To give you an example, I will use two hundred thousand barrels a day production rate and two hundred and twenty five thousand barrels per day production rate. Two hundred thousand barrels we ended up with a unit cost of .47 per barrel. At a production rate -- this is an initial rate of one hundred and twenty five thousand barrels a day -- we ended up with a cost -- an average cost over the life of the field of .53 a barrel.

Q How did it compare with tanker transportation at those production levels?

A The tanker transportation from the area out here into Philadelphia by comparison was a \$1.16 for two hundred thousand barrels and \$1.40 for one hundred and twenty five thousand barrels a day of production.

By comparing the numbers, we see that the tanker transportation at those volume estimates and at those locations and going to that destination, the tanker rates are more than double the pipeline transportation rates in this instance.

Q All right, sir, at my request and in connection with this litigation, did you make some further cost analysis



Brunjes-direct

with respect to other routes of possible pipeline routes from the Sale 40 area to the Philadelphia area?

A As a result of this litigation of process, we did take a look at other routes and the two other routes that we looked at were routes three and four. That's the yellow and the orange.

Q Could you describe generally -- they're depicted on the exhibit. Would you describe these routes for the record?

A The routes that we looked at were a pipeline route that would come down around Cape May and then be laid up the Delaware Bay area up into the Philadelphia area and come ashore in close proximity to the Philadelphia area.

Another route that we looked at at the same time was a pipeline route all the way, but it went ashore down in the Delaware area and then came around and up into the Philadelphia area.

Q Mr. Brunjes, before we get into costs with respect to these additional routes, and before leaving Route #2, which is the route going around Cape May avoiding the Atlantic Coast of New Jersey, would you tell us -- I don't believe you have yet -- what your cost analysis or your cost estimates showed with respect to the cost of transportation by Route 2 as opposed to the tanker transportation?

A Route 2 around Cape May into the Delaware Bay area.

Brumjes-direct

that was along this line and regressing a little bit. For two hundred thousand barrels per day rate of production, that turned out to be 51 cents a barrel. As you recall this was 47 cents a barrel.

Q You say this --

A This route, 1A.

Q All right.

A The associate Marine Transportation is \$1.16.

Q What about the production level of 125 thousand barrels?

A For approximately 125 thousand barrels a day, this route down here around Cape May and coming ashore in the Cumberland-Cape May area, resulted in 77 cents per barrel as compared to the other routing of 59 cents a barrel, and the tanker cost of \$1.40 per barrel.

I might add too that these transportation costs, the major consideration in these transportation costs as they were looked at is an industry facility, industry pipelines going from industry producing areas into an industry refining center. They would be common carrier type of facilities -- multiple ownership and this is generally done in the industry. The major purpose of this is to get economy of scale. Everybody benefits from the joining, both big and small producers, shippers.

Q With respect to OCS Production, is the use of --



Brunjes-direct

is the common use of pipelines customary and usual?

A The OCS Act requires that as a condition of giving right away for laying pipelines in Federal waters, that these pipelines will be common carrier pipelines.

They will provide transportation to all who desire at reasonable rates and without discrimination.

Q Do you mean in your analysis you used routes that would be usable — feasible if production were obtained in all of the areas of the sale of 40 lease area?

A Yes.

It is my understanding that, as I said before, that the maximum production that was indicated in the environmental impact statement with 320 thousand barrels a day. A single pipeline would be able to handle this quantity.

Q Now, with reference to route 3, which is shown in the exhibit, can you tell the Court the results of your comparison of the pipeline transportation in comparison with tanker transportation?

Again, you have to indicate your levels.

A Route 3, the Marine pipeline transportation route all the way to the Philadelphia area, it's more lengthy and under water pipe laying is more expensive than onshore laying. It's a longer route and more expensive. The cost on that increased to 91 cents a barrel and two hundred thousand

1  
2  
3 barrels a day production rate. That compares again to 47  
4 cents on this LA route and vs. a dollar sixteen a barrel by  
5 the tanker routing.

6 Q So transportation by pipeline at that production  
7 level is still more economical than tanker transportation?

8 A Still more economical than tanker, although  
9 increasing because of the distance and expense.

10 At 125 thousand barrels per day production  
11 rate, the unit costs goes up further. It goes up from  
12 91 cents to \$1.15 and that again compares to the 59 cents  
13 by this LA route and \$1.40 by the tanker route.

14 Again it is less expensive than the tanker  
15 but it is more expensive at the volume -- the assumed volume  
16 drops off.

17 Q What about the comparison of cost with reference  
18 to route 4, which is the pipeline route that goes through  
19 the Delaware Counties into the Philadelphia area?

20 A That pipeline is a longer route and it would  
21 be more expensive to install. So its cost is generally higher.  
22 Its cost would be for two hundred thousand barrels a day  
23 maximum production rate, 95 cents a barrel, and again  
24 comparing to 47 cents by the short pipeline and \$1.16 by  
25 tanker. At the 125,000 barrels a day production rate, it  
would be \$1.20 per barrel as compared to \$1.40 by tanker.



Brunjes-direct

So there is still about a twenty cents a barrel difference between tankers and pipelines.

In summary on this, what it tells us is that as the distance increases, as far as pipelines are concerned, and as the assumed volume drops off, that pipeline costs do increase and they do compare fairly close to tanker transportation. I think we looked at -- in looking at lesser volumes, lower than 125 thousand barrels a day production rate, that tankers and pipelines became much closer. That is comparing the long route -- comparing the short route to the tanker, even at low production rates, the pipelines are much less expensive.

Q Mr. Brunjes, let me show you what has been marked as defendant's exhibit T5C, which has also been provided to counsel.

MR. LAFITTE: Your Honor, may I approach the bench? Here is another copy of this.

Q (Continuing) I ask you to state to the Court what that exhibit purports to be and what it reflects?

A This is a graphic summary of costs -- costs as they would vary by the various routes that I have discussed here. It discusses this most direct route as route 1, the green, and you might notice where I talked about this 1A cost being about -- I believe 47 cents a barrel -- that the most direct route, if it was determined to be the proper

1  
2 route given all balances considered, it would cost about  
3 42 cents to 43 cents per barrel.

4 Q That's the green route?

5 A Yes.

6 That's at a \$200,000 day production rate. This  
7 is a summary in graphic form of the four volume cases that  
8 we looked at, 25,000 barrels a day rate, 50,000 barrels a  
9 day rate, 125,000 barrels a day rate, and the 200,000 barrels  
10 a day rate.

11 Q Mr. Brunjes, based upon your professional  
12 experience, in your opinion is there flexibility in the  
13 routing of pipelines from the sale 40 area, that would be  
14 more feasible than tanker transportation to refining areas  
15 that would be assessable?

16 A Based upon my own judgment in having participated  
17 in studies like this in the past and the expertise I have  
18 called upon in pipeline-marine transportation and others, it  
19 demonstrated to us that there was clear flexibility as to  
20 routing of pipelines and also that tanker transportation is  
21 more expensive, although feasible too.

22 Q The routes that are shown on this exhibit before  
23 the Court are in fact example routes?

24 A These are example routes.

25 These were routes determined not by detail field



1739

Brunjes-direct

analysis-- on the ground analysis, but in pursuing this in the various courthouses and through the various local administrations and whatever. This was developed from detailed maps that show railroads. It was also developed from past experiences in types of land like this. It was also developed through a process of at least screening out -- screening out to try to determine whether there were any state or local laws or ordinances or regulations that similarly excluded pipelines from traversing this area. We did not find in the course of our analysis that there were any laws that similarly excluded these types of transportation or these routes.

MR. LAPITTE: Your Honor, that would conclude our direct examination. I would offer into evidence T4W and T5C.

THE COURT: Mark them.

MR. LIKE: Objection, your Honor.

THE COURT: No, I will take them.

THE CLERK: Defendant's exhibit T5C marked in evidence and defendant's exhibit T4W marked in evidence.

(continued next page)

1  
2 O S B O R N E L L I O T T , called as a witness,  
3 having been first duly sworn by the Clerk of the  
4 Court, testified as follows:

5 THE CLERK: Full name?

6 THE WITNESS: Osborn Elliott.

7 DIRECT EXAMINATION

8 BY MR. BRUCE:

9 Q Mr. Elliott, would you identify yourself by  
10 indicating to the Court your present position, professional  
11 position, official position?

12 A As of October 20th, I was sworn in as Deputy  
13 Mayor of the City of New York in the area of economic  
14 development.

15 Q Are you still serving the city in that  
16 capacity?

17 A Yes, sir.

18 Q Prior to that time, Mayor Elliott, what were  
19 your professional responsibilities?

20 A I was a journalist for more than 30 years,  
21 21 of those years at Newsweek Magazine and for the final  
22 15 of those 21 years in various top capacities as  
23 president, editor, editor-in-chief or chairman of the  
24 board of Newsweek, Inc.

25 Q You left Newsweek in October 1976 to come

BEST COPY AVAILABLE



1  
2 and serve the city?

3 A Yes, sir.

4 Q What are the general responsibilities of the  
5 Office of Economic Development in the City Government?

6 A The Offices of Economic Development is just  
7 evolving from what had been known as the Economic  
8 Development Administration. The new charge to the OED is  
9 to form late and implement policies having to do with  
10 economic development of the City of New York on behalf of  
11 the Mayor.

12 Under that broad situation, we're charged  
13 with serving as ombudsmen to business, clearing out red  
14 tape for those companies doing business with various city  
15 departments and agencies. We are in the process of  
16 launching what I hope will be a professional sophisticated  
17 and effective marketing sales advertising and promotion  
18 campaign for the City of New York aimed at our major job  
19 which is the retention and creation of jobs here.

20 Q Is it fair to say in very general terms, to  
21 summarize the responsibilities of your office and the  
22 superintendents of that department, are to look after and  
23 promote the economic well-being and health of the City of  
24 New York, is that a fair statement?

25 A That's correct.

1  
2 was conducted?

3 A The sale itself was conducted in August, was  
4 it?

5 Q The sale date itself was August 13, 1976.

6 A Yes, I think all of this pertains to actions  
7 and statements made before that sale.

8 MR. BRUCE: I offer into evidence Defendant's  
9 Exhibit T-5J, consisting as it does, a summary from  
10 Mr. Lowe to Mr. Elliott of the city positions on the  
11 sale.

12 MR. KAUFMAN: Objection.

13 MR. LIKE: Objection.

14 THE COURT: Sustained.

15 Q Would you describe for us, without referring  
16 to the November 3rd letter, specifically your understanding,  
17 in very general terms, of the position taken by the city  
18 prior to the sale with respect to the sale itself?

19 A My understanding of the city's policy is that  
20 it has been supportive of the development of offshore  
21 properties within proper environmental and policy stipu-  
22 lations. The main thrust of the city's policy being that  
23 the needs, the jobs and beliefs that jobs can be created  
24 by the development of these offshore properties and the city's  
25 intent is to do everything it could to attract those jobs



1  
2 to this area.

3 Q Has the city's policy also been influenced in  
4 your judgment and knowledge, by the general need for new  
5 sources of energy in this region?

6 MR. LIKE: Objection to the statement as  
7 constituting testimony, putting words in the mouth  
8 of the witness.

9 THE COURT: I'll permit it.

10 You may answer.

11 A Yes, of course, this lies at the very  
12 fundamental city policy, energy cost in this area, as you  
13 know, are very high indeed. The energy shortage has  
14 impacted this area, I think, more than any other part of  
15 the United States. We've already experienced stoppages  
16 of gas deliveries which have inhibited the economic oil  
17 development of this area. It is hoped that the exploration  
18 will develop substantial sources of new supply not subject  
19 to the oddities of international politics.

20 Q What effect, if any, Mayor Elliott, has the  
21 shortage and expense of energy had with respect to this  
22 area, this city's loss of jobs to other regions of the  
23 country?

24 A I'm sorry, would you state that again?

25 Q What effect, if any, has the high price of

Elliott-direct

880

1  
2 energy and the shortage of energy had on the city and this  
3 area's loss of job opportunities to other partes of the  
4 nation?

5 A Of course --

6 MR.KAUFMAN: I think I'm going to object to  
7 that. I don't think there's any evidence in the  
8 respect that offshore will reduce the price of  
9 energy --

10 THE COURT: Maybe he will testify to that,  
11 let's wait.

12 A It's very hard to quantify, of course,  
13 exactly how many jobs are lost by this area because of  
14 interruption of supplies or because of the extremely high  
15 cost of energy. We do know that New York City has lost  
16 650,000 jobs since 1969 or thereabouts and we do know that  
17 in many instances employers cite the high cost of energy  
18 as a reason for not coming to New York or for moving out of  
19 New York. I couldn't quantify the exact number of jobs..

20 Q You mentioned, I think the figure 647,000 --

21 A Six hundred fifty.

22 Q 650,000 jobs. Of that amount, what part in  
23 the private sector?

24 A I believe 90 per cent were in the private  
25 sector or perhaps a bit more; more than 600,000 were lost



1  
2 in the private sector.

3 Q Do you have any estimate as to what the  
4 volume, in numbers you've just described, in job losses as  
5 a percentage of the city's general 1969 employment basis?

6 A Well, the city's current employment basis is  
7 somewhere around three million plus. I think that the loss  
8 must have been in the neighborhood of 15 to 17 per cent.

9 Q Do you have an estimate of the present  
10 unemployment level in the City of New York?

11 A Present unemployment level, I think the most  
12 recent figures we have are for November and they indicate  
13 that New York City's unemployment rate is somewhere between  
14 two and three percentage points higher than the national  
15 average which I believe put it at nine and a half or perhaps  
16 a bit more, nine point six per cent.

17 Q What relationship, Mayor Elliott, does that  
18 bear to the unemployment rate, let's say, in the first six  
19 months of this year; does that represent a decline?

20 A I think -- I'm not sure I got your question.

21 Q You said you gave us some November figures.  
22 I was trying to put your testimony in a time frame appli-  
23 cable to the earlier period, the period before the sale  
24 decision itself was made.

25 In that regard I was asking you -- you

4 1  
2 A I think we all recognize it's a terrible  
3 unpredictable -- it's very difficult currently to project  
4 how many jobs are going to be created by the development of  
5 the exploration and development of these offshore oil properties  
6 because the oil companies themselves don't know how much or  
7 if any oil is out there.

8 Assuming there is a reasonable prospect for a  
9 reasonable amount of oil to be discovered and developed,  
10 even then the estimates of the jobs that might be created  
11 vary widely from perhaps a few thousand to as many as thirty  
12 or forty thousand.

13 The reason for that is that there are a great number  
14 of companies involved in the support activities for the  
15 oil companies and it depends upon whether those companies  
16 decide to locate here or elsewhere as to how many jobs would  
17 be created.

18 I can say to you that New York City is very much  
19 determined to do everything it can to attract those support  
20 companies to place their onshore facilities in this area  
21 so New York City would be the prime beneficiary of any  
22 exploration or development that takes place offshore.

23 Q In that regard, Mayor Elliott, could you  
24 describe the physical facilities -- again, in general terms --  
25 that New York City now has -- has long had, that would be



5

1

Elliott-direct-Bruce

2

available for support of these kinds of operations and activities should there be some substantial finds in the Sale 40 area?

4

5

A My staff has been in the process of identifying likely properties for the use of the suppliers and support companies in the whole process of offshore oil development.

6

7

8

So far we have identified perhaps half a dozen likely sites in Staten Island, Brooklyn --

9

10

MR. KAUFMAN: Objection to all this testimony

11

as all being done subsequent to the impact statement.

12

THE COURT: I know, but every New Yorker knows

13

we have the highest point on the east coast from

14

which they can conduct surveys.

15

We have the Brooklyn Navy Yard practically

16

unused, enormous facilities. That's what you are

17

referring to?

18

THE WITNESS: In par, your Honor, yes.

19

THE COURT: And the testimony, really, reaffirms

20

what's general knowledge. Proceed. Bring it to a

21

close. I know the Mayor has a good many other more

22

important activities.

23

THE WITNESS: No, sir. I think I would take

24

objection. We really consider this very important.

25

THE COURT: I mean in testifying in court.

Elliott-direct-Bruce

There are no jobs in this court.

THE WITNESS: We are hoping there will be, sir.

MR. BRUCE: I might say what is common knowledge to a judge who sits in the City of New York is not necessarily common knowledge to someone like me who does not.

Q Mayor Elliott, you described in general terms the effect of energy prices and availability. Let's be more specific about that if we can.

Do you have any estimates as to the extent to which energy prices have increased in this area since, let's say, 1973-1974 period?

A They have tripled or quadrupled.

Q Do you have any estimate concerning the percentage of the City's needs for power generation, heating, industrial uses, other forms of energy consumption that is imported from abroad as opposed to produced domestically?

A My understanding, the City of New York now relies for its energy to the degree of 90 percent of foreign sources of oil.

Q Do you have any estimate concerning the percentage of the City's -- I use that of course not including the City government, but the City as a whole -- energy



7

1

Elliott-direct-Bruce

2

demands that is now being satisfied by natural gas?

3

A I believe that figure is 20 percent.

4

Q Have you received any information concerning

5

so-called curtailments or cutbacks of natural gas supplies

6

of recent years as they affect the City and City's industries,

7

City businesses?

8

A I'm aware of the fact that there have been at

9

least restrictions on new users of natural gas and perhaps

10

there have also -- I won't go into that because I'm not sure

11

whether there have actually been curtailments.

12

There are prospective curtailments over the years to

13

come which paint a rather gloomy picture as to the impact on

14

the job market in this area.

15

Q Have you received any estimates concerning the

16

quantum or amount of that which is anticipated?

17

A I've seen the study --

18

MR. KAUFMAN: Objection, unless it can be shown

19

he received them prior to the time of the impact

20

statement.

21

THE COURT: Yes. Establish that as a foundation.

22

Q You were going to refer to a study. Do you

23

recall Mayor Elliott, the date of that study?

24

A No sir, I do not.

25

Q You recall whether the study was generated,

LO

Elliott-direct-Bruce

THE COURT: I'll take it.

1750

Q You may answer.

A The figure is estimated at between \$250 and \$275 per employee.

Q Mayor Elliott --

MR. BRUCE: We are about to conclude, your Honor.

Q -- could you describe in a little more detail for those of us who aren't as familiar with New York as others some of the specific facilities that New York City has which might provide suitable support siting, so to speak, for offshore activities?

A We have identified about a half dozen sites, as I suggested earlier, one of them being the Brooklyn Navy Yard as the Judge mentioned.

There are two possible sites in Staten Island, Holland Hook and I believe there are two others in Brooklyn, but I can't claim intimate familiarity with these sites, but I know they do provide the kind of space needed by many of the suppliers that would be expected to move in here.

I might add, that there is a skilled work force available to those suppliers and badly in need of jobs.

THE COURT: We have the port of embarkation that is practically unused now.



11

Elliott-direct-Bruce

THE WITNESS: Right.

Q Are there any enterprises in the City, both companies that might be able to serve this area that you are aware of?

A We believe there's a very great array of unused talent and capability available in this City to provide the kind of services that an offshore exploration and drilling operation and development operation requires.

This ranges from boat yards to rail facilities to waterfront property. It includes to me, unexpected needs such as catering services to service the platforms when they're finally in place out there.

I think New York unquestionably can supply a far broader range of facilities than any other place.

(cont'd on next page)

BD 2aml

Elliott-direct

1  
2  
3 THE COURT: The only off-shore oil drilling  
4 platform where you can find French food flown in daily.

5 MR. BRUCE: My colleague from New Orleans  
6 would take exception to that, in the Gulf of Mexico --

7 THE COURT: That is correct.

8 MR. BRUCE: That would raise a whole new range  
9 of issues.

10 THE COURT: I withdraw the statement.

11 MR. HYMAN: Would you include kosher food?

12 Q Finally, how would you describe general  
13 transportation facilities reaching beyond the City  
14 of New York and feeding into New York, vis-a-vis,  
15 industrial needs and development?

16 A Obviously the Port of New York is well known  
17 as being one of the great ports of the world and that  
18 includes the airline access to it, which is very important  
19 to companies as they fly in geologists and other people  
20 connected with exploration and development. It has access  
21 by rail and other means, that I think would prove to be very  
22 beneficial to the oil companies and their suppliers.

23 MR. BRUCE: Your Honor, I have no further  
24 direct.

25 THE COURT: Any further direct from any of the  
other defendants?

BEST COPY AVAILABLE



1753

Elliott-direct

Any cross?

MR. KAUFMAN: Just a little.

THE COURT: Make it brief, please.

## CROSS-EXAMINATION

BY MR. KAUFMAN:

Q Deputy Mayor Elliott, you said you were a New Yorker all your life?

A Yes.

Q I take it you are familiar with Coney Island?

A I am familiar with Coney Island.

Q And you are familiar with Brighton Beach?

A Not as familiar.

Q How about Manhattan Beach?

A Not as familiar.

Q How about Rias Park?

A I am familiar with Rias Park.

Q Would you say you are familiar with the beach areas along the south shore of New York?

A Yes.

Q Are you familiar with how intensely they are used?

A I am, sir.

Q You would agree with me that they're very intensely used?

Elliott-direct

1754

3

1

2

A I would.

3

4

5

6

Q You would also agree with me that most of the people that use these beaches don't have any alternatives to go to in case anything happens to those beaches; is that correct?

7

8

A I think that is correct, yes.

9

10

Q Now, has your office evaluated the dangers of an oil spill, if a pipeline was to come into the New York City area and dump oil on those beaches?

11

12

A Not to my knowledge.

13

14

15

Q So in your looking for jobs, you have not considered the losses that would take place to Coney Island or to the other areas, if there was an oil spill that destroyed a season?

16

17

18

19

20

A We all know in this complicated area of environment versus economic development, there have got to be trade-offs. At this moment in New York's economic life, I believe that those trade-offs have to lean in the direction of economic development and job creation.

21

22

23

Q Would you say it is the policy of the City of New York to trade off the beaches — I should say the policy of the mayor?

24

25

A I think you are putting words in my mouth.

Q You used the word "trade-off." Would you say

BEST COPY AVAILABLE



1755

Elliott-direct

it is the policy to trade off those beaches or the risk of loss as against the possibility of getting some jobs for New York City?

A No, I put it a different way. I would trade off what I considered to be the rather minimal risk against the rather major potential job creation.

Q But you just said you hadn't analyzed the risks.

A I have read enough to have that as my own rule. I said my agency had not, to my knowledge, analyzed it.

Q Now, just one or two other things:

You have been with the city government now about four months; is that correct?

A Little less.

Q You are the deputy mayor?

A Yes.

Q Are you familiar generally with the way the government works?

A I'm getting there.

Q Now, the jobs that you were talking about, I think would be what you would call support service jobs; is that right? Support type jobs?

A Primarily.

Q They did not involve the building of any kind of tanker terminals in New York, did they?

Elliott-direct

1756

5

1

2

A Tanker terminals?

3

4

5

Q Yes, big huge tanker terminals taking 40 acres for lots of places to bring in tankers — development facilities?

6

7

A I imagine that would be included in the estimates.

8

9

Q And refineries?

10

11

A My understanding is that the refineries already exist and no new ones would be needed.

12

13

Q You won't be planning bringing in jobs of that kind?

14

15

A I believe not.

16

17

Q How about pipelines coming across New York?

18

19

A I wouldn't think that pipelines carry with them that much employment once completed.

20

21

Q That is correct.

22

23

It is possible, isn't it, that they might want to bring a pipeline up to New York City?

24

25

A Yes.

Q If you want to bring a pipeline or some other facility like that, New York City has zoning laws, does it not?

A Yes.

Q And those zoning laws to be able to bring in



6

1

Elliott-direct

2

a big facility of some kind like a treatment facility or processing plant, would have to go through first the city planning commission, would it not, to get permission to do this?

5

6

A I believe so.

7

8

Q Particularly if you were going to use city property to come across beaches or something like that?

9

A Yes.

10

11

12

Q Assuming you got through the city planning commission, which is an executive office of the mayor, you would have to go to the site selection board?

13

A I am not familiar with that.

14

Q Do you know what it is?

15

A No.

16

17

18

Q You'd have to go to the Board of Estimate to get approval as to whether or not you can use city property for the purposes of bringing private facilities --

19

20

21

MR. BRUCE: May I just clarify something, so the record is clear? By "city property" you mean property owned by the City of New York?

22

MR. KAUFMAN: Like a beach, yes.

23

24

MR. BRUCE: Not property in the city owned privately?

25

MR. KAUFMAN: That is correct.

Elliott-direct

1758

1  
2 A Is there a question pending?

3 Q You'd have to go to the Board of Estimate for  
4 that, would you not?

5 A I am not familiar with all the processes  
6 needed. I assume if you state so, that is correct.

7 Q Well, the mayor has four votes on the Board  
8 of Estimate?

9 A Correct.

10 Q Then there are four votes for the controller?

11 A I believe that is true.

12 Q And four votes for the president of the City  
13 Council?

14 A Yes.

15 Q And there are two votes for each of the  
16 borough presidents, 22 votes altogether, of which the mayor  
17 controls four?

18 A Yes.

19 Q So that you could not at this time state that  
20 you know for sure whether or not anything that required the  
21 approval of the Board of Estimate, could go through the  
22 Board of Estimate?

23 A I don't believe I did so state.

24 Q You can't state that, because you can't state  
25 what would happen?



Elliott-direct

A I can't state that, but I can state that I believe New York City's posture would be a friendly posture toward the development of offshore oil facilities and if that required the placement of onshore facilities, of the sort that you suggest, that New York would continue to take that generally favorable posture.

Q You can't predict what the result of the Board of Estimate would be?

A That is correct.

MR. KAUFMAN: I have no other questions.

CROSS-EXAMINATION

BY MR. LIKE:

Q Good morning, my name is Mr. Like, and I represent the County of Suffolk.

A Yes.

Q Mr. Deputy Mayor, are you familiar with what is called the Gateway National Recreation area?

A In general terms, yes.

Q There is before you a map showing the region of the proposed Sale 40 drilling and also showing the New York area.

Can you approach this map with the permission of the Court and I would ask that the witness be given a colored pencil, and I ask you whether you can generally

2

have no impact.

3

MR. KAUFMAN: I would be prepared to waive that.

4

MR. BRUCE: I would also.

5

THE COURT: I bring it to your attention. Thank

6

you.

7

Call your next witness.

8

MR. LAFITTE: As you recall Mr. Brunjes testimony

9

yesterday was essentially factual in nature. I

10

would tender him as an expert in the field of

11

transportation.

12

FRANKLIN BRUNJES, having been previously duly

13

sworn by the Clerk of the Court, resumed the stand

14

and testified further as follows:

15

Q Good morning, Mr. Brunjes.

16

My name is John Kaufman.

17

First, I would like to get into a couple of

18

essentially factual questions. You said you made

19

an advisability study of the various pipeline routes

20

that you were talking about?

21

A Right.

22

Q Is there anything in writing that was put

23

in with respect to that feasibility study? Any intercorporate

24

memorandum about it?

25

A Yes, there are study papers and summary reports,



9 1  
2 things of that nature.

3 Q Do you have them?

4 A Not with me. I have one in my briefcase.

5 MR. KAUFMAN: Could we have that produced so  
6 I may look at it?

7 THE COURT: Yes.

8 MR. LAFITTE: May I say the study and the  
9 report that Mr. Brunjes refers to is a summary of  
10 the activity of shell in this connection. The  
11 material is considered to be by the company of a  
12 proprietary nature. It would prefer that it not be  
13 revealed. Obviously we will have the report here  
14 and we will be happy to have the witness cross-  
15 examined with respect to this and have counsel review  
16 it. We do not offer it.

17 THE COURT: It will be returned.

18 It is to be used only by plaintiff's counsel  
19 and not revealed to anyone.

20 MR. KAUFMAN: Only as it will be used in  
21 the courtroom.

22 THE COURT: Just use what has to be revealed  
23 by the testimony. It should not be included  
24 in the public record. If the Appeals Court wants it,  
25 they can send for it.

2 MR. LIKE: Reserving the right of counsel to  
3 apply to the court for an order releasing the document  
4 of any proprietary consent.

5 THE COURT: Of course.

6 Q Just one or two other things:

7 Are there any others that you don't have here?

8 A I am sure there are, say like in the engineering  
9 files, the detailed estimates -- things of that nature.  
10 There are probably many many backup papers in performing  
11 this analysis. As I said yesterday, we looked at generally  
12 three different areas as potential producing areas. We  
13 looked at various volumes. We started compounding the  
14 number of studies, the number of estimates, and this could  
15 I imagine, be a fairly large pile. What you have there is  
16 kind of a summary.

17 Q Now, as I understand this was an analysis  
18 made by one company and one company alone; is that correct?

19 A That is correct, for the purpose of assessing  
20 the price as to what Shell would offer for the leased sales.

21 Q It was done assuming that this would be Shell's  
22 recovery or this would be what everybody's recovery would be?

23 A Well, in a situation like this, it is  
24 impractical to consider each individual company pursuing  
25 its own transportation routing.



1  
2                   What we did was look at -- like I said  
3 yesterday -- an industry base type of study, assuming that  
4 industry had certain productions there and Shell maybe had  
5 a percentage of it or none of it.

6                   Q     Shell has no refinery in this area, do they?

7                   A     That is correct.

8                   Q     Now, can you tell me for example who has  
9 the refineries up here in Monmouth and who has the refineries  
10 down here?

11                  A     I can probably mention most of them. I  
12 believe Exxon has a fairly large refinery here at Bayway.  
13 Chevron at Port Amboy and I believe Hess has a refinery  
14 in that area too.

15                  Q     And City Service?

16                  A     I am not sure.

17                  Q     Were all of them winners of bids?

18                  A     I am not sure.

19                  Q     Were you here yesterday when there was  
20 testimony on that subject?

21                  A     I probably was. I may not have been listening.

22                  Q     Do you recall hearing that Exxon was the largest  
23 winner of bids in the area?

24                  A     I don't recall that.

25                  Q     What were the others?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Chevron and Hess.

Q Now, in exhibit T5B in evidence, can you tell me whether all of these companies are among the listed winning bidders?

A There is Hess and Exxon and --

Q All three of the companies have refineries up here on the northside (indicating)?

A That's correct.

(continued next page)



1  
2  
3 Q Now, that still requires, would it not, the kind  
4 of permit that we have been talking about earlier in this  
5 court, local zone permits and all of those things, true?

6 A Any permits that are applicable by law.

7 Q So that aspect of the case hasn't changed at all  
8 by virtue of the fact that it comes through Delaware rather  
9 than New Jersey?

10 A No.

11 Q And this pipeline one came right smack across  
12 Ocean County. So that certainly requires consent of the local  
13 community; isn't that right?

14 A Certainly.

15 Q Pipeline 1-A comes across Cape May and that  
16 requires all of those --

17 A Yes.

18 Q They all have zoning laws in places and things  
19 like that that have been talked about here in the courtroom?

20 A That's right.

21 Q Route 2 comes around Delaware Bay and then comes  
22 in at Cumberland County?

23 A Yes. On that map -- I think in our book we may  
24 have even shown it in the Cape May County coming in that  
25 general area by the border.

Q Okay. In order to come across on Cumberland

1  
3 2 County or in Cape May County, again there is zoning require-  
3 ments in place, and there is CAPRA, so that is required, the  
4 same set of permits; isn't that correct?  
5

6 A That is correct. This is not unusual for any  
7 pipelines coming ashore in any part of the country. You know,  
8 substantially quite a bit of local zoning.

9 Q All right.

10 A This is a normal procedure in pipeline  
11 development.

12 Q In bringing those pipelines ashore, you always  
13 run the risk, then, of -- that anybody is going to say, no,  
14 no pipeline across its territory; isn't that right? And then  
15 you go to look for another place?

16 A We hope there would be a due hearing. Usually  
17 there are laws and ordinances that provide the applicant, you  
18 know, with some reasonable petition.

19 Q Yes. I am not saying you can't ask. What I  
20 am saying is, there is a possibility you can be turned down?

21 A That's true.

22 Q Every one of those, except for the one that  
23 runs right up smack in the middle of the water?

24 A I would imagine that that would require various  
25 types of permits, too, from the state and --

Q Corps of Engineers?

BEST COPY AVAILABLE



2

A Federal. Perhaps even local authority.

3

Q Even that would require --

4

A Yes.

5

Q So every one of these -- no matter what your

6

alternative is, you're still coming back to the question that

7

you have to get the local approval; isn't that right?

8

A Local, state, Federal. Any approval required

9

by law.

10

Q All right. Now, do you know what the scale is

11

on that map?

12

A No, I don't.

13

Q I wonder if you would do this for me. This is

14

160 miles; is that right? Give or take a couple of miles?

15

A I think that's about it.

16

Q Will you take the ruler and tell me what the

17

scale is, approximately?

18

A About 18 inches.

19

Q So 18 inches into 160 miles is about nine miles

20

to the inch?

21

A Sounds pretty good.

22

Q Okay. So that the most direct route that you've

23

got here is 160 miles.

24

Now, the water route of the tankers that you

25

calculated is 260 miles; is that right?

1  
2 the longer the life of the field. So if we had a two hundred  
3 thousand barrel production rate, the life would be longer  
4 than if we had a hundred and twenty five thousand production  
5 rates. In general, I believe it was many of the cases that  
6 were in the order of 20 to 25 years.

7 Q Have you looked at the impact statement?

8 A No, I have not.

9 Q Have you looked at the economic model of the  
10 impact statement?

11 A No, I have not.

12 Q All of your models, then, were lives of fields  
13 for twenty years or more; is that correct?

14 A I am not certain of that. I said most, as I  
15 recall, were in the order of 20 to 25 years. And that,  
16 again, is based on the assumption that, you know, good  
17 common, ordinary oil is known to be found there. Oil  
18 with good pumping characteristics.

19 Q I understand.

20 A If there is, you know, very heavy viscous  
21 it may only be five years.

22 Q Drilling may be taking place at different  
23 times over the next five years, won't it?

24 Exploratory drilling?

25 A I don't know about that. I just don't know.



they did not know just what they were dealing with, either.

Q So the people who gave it to you didn't know what they were dealing with; is that right?

A I think we --

Q And you didn't know what you were dealing with?

A I think in this situation I believe we -- I believe I -- I think the situation here is that I think I heard some testimony to the effect yesterday that nobody really knows what if any oil is out there.

Q So that's all speculative, what you presented yesterday.

A I think this whole thing has risks to it.

Q Well, I didn't ask you whether it has risks. I asked you whether or not that chart is speculative.

A No. That -- I don't quite get the context of this chart being speculative. This chart is not speculative based on the assumptions that went into it. But if you -- if one was to speculate that there was no oil there, then I don't believe that this chart has any merit or substance.

(continued next page)

oil there. It wouldn't be prudent to commit vast energies in the way of human resources and money to consider alternatives in infinite detail.

Q For example, do you know whether or not it's technologically feasible to run a pipeline on any one of those routes?

A That's pretty much the objective of our study.

Q To find out if it's technologically feasible?

A Generally, there is a state of the art technology that would allow such to happen.

Q Doesn't --

A Secondly, based on a broad range of assumptions as to timing, quantity, quality, destination, what the cost for various routes and modes of transportation are.

Q Did you consider, for example, that if Exxon discovered one field, let's say in its area out here, and Shell had one in its area and, let's say, Getty oil found something in that area (Indicating) that Exxon might want to take its oil up to its refinery in the north, is that in your calculation?

A That is not in my calculation. I believe there is probably an infinite -- not infinite -- but many participants that were successful in the lease bidding.

Q That's right, one of them, for example, could



1  
2 indeed --

3 MR. LAPITTE: Let him finish his answer.

4 Q The answer calls for yes or no.

5 THE COURT: Let him finish.

6 A I was interrupted. I was continuing to say  
7 that there are many participants, evidently that were success-  
8 ful here. I'm sure many have refineries in the Philadelphia  
9 area. We determined a while ago that refineries in northern  
10 New Jersey were successful, too. You have possibly all these  
11 combinations and everybody wanting to get to their own place  
12 plus Shell. There's even the Federal Royalty oil that has  
13 to go ashore, has to get in the marketplace somewhere, too.  
14 There's the other producers who are probably not refiners,  
15 probably some of those involved here that are looking for the  
16 best place to market their oil. All these factors have to be  
17 taken into consideration in final route selection or the  
18 transportation mode. It would be very premature at this time  
19 to speculate as to an exact routing involved in who would  
20 participate, the exact destination. I hate to think that  
21 maybe Exxon would be the only successful company. I'm sure  
22 they wouldn't be too enthused about a pipeline route to the  
23 Philadelphia area.

24 Q Let's assume, which is the question I was ask-  
25 ing you, let's assume that the oil is found scattered, right,

all over the place, everybody has the same approximate results. If Exxon wants to bring their oil up here, they only have to travel about 130 miles by tanker, right (Indicating)?

A That sounds right.

Q Their tanker cost is going to be less than the tanker cost of bringing that 260 miles, isn't that right?

A We can't say that, relatively speaking.

Q You don't know that?

A To the extent that mileage affects cost for that portion of it. They may have more expensive tankers than someone else going through the Philadelphia area.

Q Do you know?

A No, neither do they or do you.

Q You can't sit here and testify then at this point that the cost here would be greater or less than the cost taking it in by tanker, is that correct, you as an expert on transportation?

A I could not come to that conclusion based on distance alone is what I'm saying.

Q That they might have newer tankers?

A They might have lower cost tankers, might have more efficient tankers, might have a larger size, more efficient tanker than people going to the Philadelphia area.

Q That would bring the cost of tankering down?



5

1

2

A It would have a tendency in that direction.

3

Q It would make it more competitive with pipeline,

4

wouldn't it?

5

A I think we would have to say yes. There's the economy of scale both with pipelines and tankers.

6

7

Q That's an open question at this point, isn't it?

8

9

A That's right, the question will have to stay

10

open until oil is found and the extent of the reserves and

11

the life of the field, the production rights to be determined.

12

It really can't be defined until that time.

13

(Continued on next page.)

14

15

16

17

18

19

20

21

22

23

24

25

Brunjes-cross-Kaufman

T 4 am 2

R 2

ss/bw 3

## CROSS-EXAMINATION

1774

BY MR. KAUFMAN (Cont'd):

Q Then what this means, what you have presented here is a possible scenario?

A A possible scenario.

Q Based on certain assumptions?

A That's correct.

Q One of them is a 25 year life of the field?

A Life varying, as I said, going to a peak in three years, declining at 15 percent a year until we get out to 500 barrels a day. That gets us into the range of generally 20 to 25 years.

Q What you also said because you presented a chart which showed certain costs. You would then agree with me that that chart showing those costs deals only with the one possibility that you outlined which is the certain life of the field, the certain sized field under certain fixed circumstances, but that there are dozens of other possibilities for the laying of pipelines or for the laying -- for the using of tankers, right?

A In my testimony yesterday I've discussed two production rates from a single area. As I said before, we looked at three areas. We looked at rates, four different rates, 25, 50, 125 and 200. We looked at many different



1  
2 combinations. Then you apply the rooting to each of those  
3 computations. There are infinitely a number of more that one  
4 can look at.

5 Q You are fixed on those?

6 A Yes, as being reasonable in our mind, to identify  
7 the feasibility, the technical feasibility and idea of the  
8 cost.

9 Q The one you picked had the longest possible  
10 tanker line?

11 A (No response).

12 Q Isn't that right, just yes or no?

13 A One can look at longer tanker lines. I don't  
14 quite get --

15 Q The longest possible tanker line between where  
16 you are and into Jersey --

17 A Oh, compare to New Jersey?

18 Q I'm not talking about going down to the Gulf.  
19 The purposes for bringing it to New Jersey?

20 A I believe we demonstrated getting to Philadelphia  
21 is longer than getting to New Jersey.

22 Q Considerably longer in what sense?

23 A (No response).

24 Q Will the cost of transporting the oil that we  
25 are talking about vary, depending upon where you're bringing

3  
1 it in from?

2  
3 A Yes.

4 Q So that if it were all found down here (indicating  
5 for example or which were found down here, you might be running  
6 the pipeline from here rather than from there (indicating)?

7 A That's correct. It's a very safe assumption  
8 that the pipeline would be connected to the production or  
9 the centralized production.

10 Q Down here being at the southern end of the  
11 initial field that was put out for bid and which, I believe,  
12 has been bid for; is that right, that it would be down at the  
13 bottom of that field and if it were found down there the pipe-  
14 line might run from here (indicating)?

15 A It would seem logical if that was the center of  
16 concentration of the production.

17 Q Let's talk about that for a minute. Suppose we  
18 found or you found, or Exxon found and Getty found three  
19 different fields. Let's say one here in the very southwest  
20 corner and let's say Getty found that closest to its refinery  
21 and let's say Exxon found one out in the eastern area and let's  
22 say you found your field right where you have it marked. Now,  
23 you have got three separate fields. Each of those fields,  
24 let's say, developed 65,000 barrels a day capacity?

25 A Right.



1

2

-4

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q What you said, as I understand your chart, is that it still pays to run a pipeline where there is a 65,000 barrel a day capacity as compared to tanker, isn't that right?

A My chart was for three specific areas. I don't believe they would have been necessarily the three areas you just talked about there.

Q So you can't answer that question?

A Right, there is not relationship to this assumption versus that.

Q Excuse me, I don't mean the map. I mean the graph that you have shown, the graph that you showed which showed tanker fields and showing different costs on tanker fields, on field of tankers as against pipelines, what the costs were.

A That was based only on one area. That was based only on that production area indicated on the map. That is a single-point production in that upper corner.

Q Didn't your graph show that -- if it didn't, please tell me -- that if you run a 50,000 barrel a day field it's still cheaper for tankers, wasn't that its purpose, than pipeline, yes or no?

A 50,000 barrels a day from that point as indicated on the map by those various routes to the Philadelphia area, as I recall, yes, it indicated it was still cheaper by pipeline.

1778

1  
5 2 Q That might not be true --

3 MR. LA FITTE: I'm asking, may the witness have  
4 the graph?

5 THE WITNESS: I'm not sure I do. I have the  
6 numbers.

7 (Document handed to the witness by Mr. LaFitte).

8 Q So that at that point it would pay to run pipelines  
9 right if it was 65,000 barrels, according to your graph?

10 A Well, in looking at my graph, refreshing my  
11 memory, you're saying again what production rate -- sorry --

12 Q Pick 75.

13 A Let's pick 75.

14 Q Sure.

15 A At 75 the tanker route seems to be very close  
16 to this longest land route, essentially even with it. It would  
17 be a tossup as between tankers and pipelines at that 75,000  
18 production rate. If it was determined through all the processes,  
19 weighing everything in and finally determine the pipeline, the  
20 best feasible alternative for the pipeline considering all the  
21 situations would be this longest route, it would be a tossup  
22 between pipeline and tanker cost if one were trying to get to  
23 the Philadelphia area.

24  
25  
fols.

(Continued next page)



1773

Brunjes-cross/Kaufman

transportation that you might want to consider.

Q If I have a 200,000 barrel pipeline, which is the highest that you are talking about, and now we have got three discoveries of moderate size, 75,000 barrels a day, we are already in excess of that pipeline?

A If you say 200,000 barrels a day pipeline, that would be a 30-inch pipeline. I know there is the technology for pipelines up to 48 and perhaps even 52 inches.

Q Those are the 300 barrels a day kind?

A Yes.

There is not a limit of 200 barrels a day. That just happens to be one of the volumes we looked at.

Q Then the economies of scale go up as you increase the size of the pipeline?

A Yes. The capital cost of a pipeline -- these are rough rules of thumb -- increases generally in proportion to the diameter. Thus the through-put of a pipeline increases maybe something to the order of two and a half power. There is less friction, less surface area and you can pump more oil.

Q I understand that.

Let us go back to the Exxon problem. Let us say I am an Exxon executive and I have figured out, according to your chart, that I can afford a pipeline by

1  
2  
3 A And the pipelines throughout history, especially  
4 crude oil pipelines, have been sized for reserves in  
5 particular fields. And it's -- and they are sized final size  
6 of a line which is generally set based on the total reserves  
7 of the field.

8 Q Based on the reserves of the whole field?

9 A Yes.

10 Q As far as they know?

11 A That's right.

12 Q So that you would size the pipeline based on the  
13 size of the estimated reserve of that field?

14 A That is a very prudent approach.

15 Q Okay. Now, at this point we have a pipeline  
16 and its size. It's been built and it's based on the reserves  
17 of that field and the production capacity that is coming on?

18 A Right.

19 Q All right. Now, two years later we have the  
20 next at another corner. Let's say this fellow has 75,000  
21 barrels a day.

22 THE COURT: I think we have gone far enough.

23 Move on to another line of speculation.

24 MR. KAUFMAN: All right, your Honor.

25 Q Have you calculated what the cost of pipeline  
transport would be if two or more smaller pipelines were built?



1 A No, we have not.

2 Q You have no idea?

3 A No.

4 Q In your calculations, did you calculate the  
5 relative cost of tanker use as against pipeline transport  
6 where they are coming from different fields and going to  
7 different areas? You didn't calculate any of that, did you?  
8

9 A We calculated -- again, to regress -- against  
10 three different locations.

11 Q All going to Philadelphia?

12 A And three different combinations. We also  
13 looked at the combination of tanker movement from three  
14 separate areas, too, so that we could make a comparison case  
15 by case.

16 Q Are you familiar with the pipeline patterns in  
17 the gulf and North Sea?

18 A In the gulf and in the North Sea? I am  
19 generally familiar with the pattern in the gulf, but not the  
20 North Sea.

21 Q Do you know, for example, that there are four  
22 pipelines in the British sector along in the North Sea?

23 A No.

24 Q In the Gulf there are a lot of pipelines coming  
25 through, aren't there?

Q You can bring it in by tanker? 1782

A Then you would have to consider the alternatives and there is quite a significant cost for tankers, as far as low volume is concerned. Its cost is affected by low volumes, too.

Q What I understand your charts to show is that where you have the long pipelines, the tankers were cheaper in small production; isn't that correct? Where you got into the very big volumes, it's where the tankers began to be more expensive; isn't that right?

A For the origins and destination that we picked here, You know some of the routes are much longer than others.

Q One of the things that I'm trying to figure out is this question of feasibility, what you mean when you talk about economic feasibility. Is it your way of looking at it from the point of view of the oil company, that is, tankers got to be less expensive than pipelines, pipelines are then not economically feasible; is that the position? Whichever is cheaper is economically feasible?

A That is the way we try to approach it, and then we, of course, know that there are many other factors besides pure economics when they make a decision.

Q I'm only talking about economics.



MR. LAFITTE: I request that the witness be allowed to finish his answer.

Q I was only talking about economics. We have not dealt with technology.

A The economics one would tend to favor the one that has the lowest unit cost, perhaps there are other risks involved. A tanker is a piece of mobile equipment. If the field doesn't develop or the life is cut short, you can move it off. Instead of going to Philadelphia, you can go someplace else. There are many business factors that go into this.

Q Those two that you mentioned would militate towards tankers being cheaper.

A I would say that. It says that tankers might be a little more flexible facing risks of future uncertainty or something like that. You could perhaps find alternate employment for tankers. There are factors on the other side for the pipeline as well, I'm sure.

Q Now, we were talking before about the cost differential by going by tanker up to New York as opposed to taking that long trip around and up the Delaware. Can you give me in your expert opinion-- Let me withdraw that.

Would it be fair to say that the effect of that shorter trip could be to cut the tanker cost by about

1784

1  
2 ten or fifteen percent?

3 A On the surface, that doesn't seem unreason-  
4 able.

5 Q Even a little more, maybe twenty percent?

6 A I feel more comfortable with your ten to  
7 fifteen than your twenty.

8 Q Now, if, then, you would take your chart--

9 A Now, are you talking about going to the  
10 New York area, and this chart compares going to the Phila-  
11 delphia area and stopping there, certainly if you wanted  
12 to compare getting by pipeline to the New York area by  
13 going around, by Philadelphia--

14 Q What I want to compare it going to New York  
15 by tanker as compared to going by pipeline to the Phila-  
16 delphia refineries.

17 A By tanker--

18 Q Tanker to New York as compared to Phila-  
19 delphia.

20 A O.K.

21 Q Taking a look at that and see if you can  
22 extrapolate. What it seems to show, if we can agree at  
23 this point, even if we were to drop that curve, that  
24 red line curve which is Route 5, even if we were to drop  
25 it ten or fifteen percent, it would be well above Route 1,



1 which many tankers would be more expensive than Route 1,  
2 correct, and it would be still more expensive than Route  
3 2; is that right?  
4

5 A That's right.

6 Q And it would be still more expensive than  
7 Route 1-A?

8 A If 1-A was on there, right.

9 Q O.K. That in terms of Routes 4 and 5 it  
10 might very well not be; is that correct?

11 A That could be. You are comparing going to  
12 different destinations from the same origin.

13 Q Right. Now, that being the case, what we  
14 have really just said isn't that if we take the pipelines  
15 across the state of New Jersey, Route 1, Route 1-A,  
16 Route 2, if we bring them across New Jersey they are going  
17 to be less than tankers, right?

18 A That's right.

19 Q But if we bring them the long way, they would  
20 probably be the same as or more than tankers going to  
21 New York?

22 A It would be close to tankers, based on the  
23 information that we have put into this study, yes.

24 Q If that was so, the argument might be very  
25 well at that point that they are not economically feasible

1  
2 to bring it in unless the pipelines come across New Jersey,  
3 right?

4 MR. BRUCE: May I object. As to the argu-  
5 ment that Mr. Kaufman is referring to a legal  
6 argument on economic feasibility in a legal sense,  
7 and if he is, the witness is not qualified to answer.  
8 I don't know what arguments he is talking about.

9 THE COURT: I will permit it.

10 A What I would say to that is: when tanker  
11 cost approaches the pipeline cost, then much more detailed  
12 study would be indicated before one made up their mind  
13 as to which was the cheaper and which was the best and  
14 we'd leave the question open. We had not summarily con-  
15 cluded that we ought to go one way or the other.

16 Q Fair enough. If we find that pipelines are  
17 not technologically feasible or if there was something  
18 that would run the cost up, tankers would be more feasible.  
19 Many factors.

20 Q Under that set of circumstances-- A couple  
21 of other things that I wanted to ask you: What is the  
22 measure of accuracy that you put into your figures, plus  
23 or minus what?

24 A Plus or minus 25 percent, which is normal  
25 practice on studies of this nature.



1  
2 Q Let's see if I understand. What that means  
3 is that the cost figures that you put into testimony  
4 yesterday in your expert opinion, any one of those numbers  
5 could be wrong by 25 percent?

6 A Right. They could vary one way or the other  
7 up to 25 percent. That's what we strive for.

8 Q One possibility or one possible scenario is  
9 that the tanker number is high by twenty-five percent,  
10 correct?

11 A You are getting to a scenario of saying that  
12 the tanker could be high-- could be on the upper end and  
13 the pipeline on the lower end. It's possible. It's not  
14 near as likely as hitting things in the midpoint or in  
15 the mid band or whatever. It is not impossible.

16 Q Even given your set of evidence that you have  
17 put in there, if you are within the parameters that you  
18 allow yourself for either/or, it is quite possible that  
19 tankers would be considered by the Shell Oil to be more  
20 economically feasible than pipelines, correct?

21 A That is correct, in that we would look at  
22 the thing -- we'd not go out and buy tankers or lease  
23 tankers or otherwise charter tankers or advocate pipelines  
24 on the basis of this preliminary study. We'd do a lot more  
25 work to define cost and things of that nature before we'd

1  
2 push for any finite type of transportation system.

3 Q I take it what that means you haven't made  
4 up your mind yet.

5 A That's right. The door is open. We have  
6 not made up our mind. This preliminary study indicates to  
7 us that pipelines would seem to have the edge from a feasi-  
8 bility and economic cost study for the main transportation  
9 routes or the more direct routes.

10 Q Plus or minus 25 percent?

11 A Yes.

12 MR. KAUFMAN: No further questions at this  
13 time.

14 I forgot one question.

15 Q If you turn to page 45 of your report, now,  
16 essentially, we could characterize your report, which is  
17 this study, and the map, as a kind of feasibility study  
18 or economic feasibility study?

19 A Yes, a feasibility study based upon informa-  
20 tion that was known at the time the study was put together.

21 Q And that was before the impact statement?

22 A Right.

23 Q Now, would you look at page 45, and may  
24 I read you from this paragraph:

25 "However, recently this transportation



1 study and its economics were evaluated utilizing the  
2 straight median of New Jersey as the final location  
3 to come ashore with the oil transported from produc-  
4 tion fields. However, recent decisions made by the  
5 Environmental Protection Agency for the State of  
6 New Jersey revealed the possibility of excluding the  
7 entire Atlantic coast of New Jersey from any off-  
8 shore oil lines, and therefore a shore approach  
9 location in the Delaware Bay was selected as  
10 possible landing point. However, this may cause  
11 considerable local opposition because of the areas  
12 economic reliance on the oyster beds located from  
13 the Maurice River to Arnold Point."

14  
15 You were able to find out about the local  
16 opposition that was developing in New Jersey, weren't you?

17 A As far as looking into the right of way or  
18 the possible routes on shore, I believe, as I have talked  
19 about yesterday, we had looked to the extent that we were  
20 trying to find out whether there were ordinances, local  
21 laws or state laws, that summarily prohibit pipelines from  
22 coming ashore--

23 Q But were you able to find out?

24 A --and we determined to the best of our  
25 ability that there were none. In the course of trying to

1  
2           Q       On page 2, Mr. Brunjes, you make the state-  
3 ment that all of the conceptions and estimates used  
4 throughout the study are based solely upon information  
5 gathered from maps, prior studies and other available  
6 information without benefit of any on site investigative  
7 research.

8                   What type of on site investigative research  
9 is customarily undertaken in connection with making a  
10 final decision as to whether or not to resort to pipelines or  
11 to use tankers to transport OCS crude ashore?

12           A       This would generally involve, as far as the--  
13 I imagine what you're getting at, is it permitted and the  
14 routing and things of that nature, that there would have  
15 to be quite a bit more work done on the exact desired rout-  
16 ing first, and then there would be, you know, further  
17 identification of what permits, what ordinances, what local  
18 bodies one would have to apply to, who owns rights of way,  
19 there would have to be quite a bit of work done as to  
20 land ownership, just identifying land ownership, and who  
21 you approach and things of that nature. The permitting  
22 process, crossing wetlands, things of that nature, require  
23 Corps of Engineers permits. There would be public hearings,  
24 submission of information. One would try to identify what  
25 information is needed to be submitted, environmental rout-  
ing information, design information.



1  
2 All this -- all these things would have to  
3 be done.

4 Q You testified that you did some type of  
5 a check of local ordinances to see whether or not there  
6 was some summary prohibition against pipelines.

7 A I did not personally do that. One of the  
8 members of the team that worked on this report, a right of  
9 way person, checked on this.

10 Q When did he make that check?

11 A Somewhere between January and April of last  
12 year.

13 Q Did he report to you as to the results of  
14 his investigation?

15 A He reported in summary as we were putting  
16 this thing together, this report together.

17 Q Did he prepare a list of local laws, statutes,  
18 regulations and other authorities which bore upon the  
19 subject of whether or not pipelines would be prohibited?

20 A I can't answer that. I did not see any list.

21 Q Do you know whether or not such a document was  
22 prepared?

23 A No, I do not.

24 Q Is it your testimony that no such document  
25 was prepared?

1  
2 Q Is he admitted to the bar in the State of  
3 New Jersey?

4 A I don't know.

5 Q I take it that you don't know whether --  
6 Withdrawn.

7 You say he has a law degree. Is he licensed  
8 to practice law?

9 A I do not know.

10 Q You would agree that you don't know whether  
11 he is admitted to the bar of New Jersey, the bar of New  
12 York, the bar of Delaware?

13 A I don't know.

14 Q Continuing further on page 2 of your  
15 study; you said:

16 "The results of this study are based  
17 on feasibility and economics only. Other factors  
18 such as investment risk, pollution hazards and  
19 reliability must also be taken into consideration,  
20 when specific transportation schemes are selected."

21 What are you referring to when you identify  
22 the factor of investment risks?

23 A One of the things could be the life of the  
24 field. If one, say, pursued a pipeline course, only to  
25 find out that subsequent to the decision and the implementa-



1793

Brunjes-cross/Like

993a

tion of the pipeline that may be really the life of the  
field is much shorter than was thought to be. That's a  
risk. There are many risks in doing business. Any invest-  
ment, building a shouse or you name it, there is risk.

(Continued on the next page.)

Brunjes-cross/Like

1794

relevance .

THE COURT: They may put it into reserves or do a lot of things. He says he takes his orders from the production and exploration men. They tell him what the life is. Then he supplies transportation during that lifetime.

Q Is it possible, Mr. Brunjes, that at some time during the life of the field a decision might be made which discounts transportation by pipeline and resorts instead to transportation by barge?

A Anything is possible, I would imagine. I don't know whatever might prompt such a thing. I -- offhand, I couldn't imagine what might prompt it.

Q Well, if the pipeline became unserviceable for some reason or if the economics favored the use of barges for the remainder of the life of the field, could that occasion a shift in the method of transport at that point?

A Anything is possible.

Q Could there also be a shift from pipeline to tanker at a point during the life of the field if the economics favored that shift?

A Anything is possible. I imagine if someone -- if one wanted to, he could probably change modes of transportation annually, yearly, monthly, but that just --



## Brunjes-cross/Like

6

1

2

A They could.

3

4

Q For example, you assume a discount rate of 11 percent; is that right?

5

A That's right.

6

7

Q Does that represent your assumption as to the cost of money to finance the pipeline construction?

8

A That is generally right.

9

10

Q And is that 11 percent expressed in 1976 dollars?

A Yes, it is.

11

12

13

Q And any pipeline construction, if that mode is selected, would take place after the exploration period; is that right?

14

A Would you repeat that, please?

15

16

Q Any pipeline construction if decided would take place at some point after the exploration period?

17

A That sounds correct.

18

19

Q So the earliest date that pipeline construction could begin, would be in about how many years?

20

A From when? From the —

21

Q From today.

22

A From today?

23

Q Yes.

24

25

A It would really depend on how fast there was — that oil was discovered and how fast the reserves, the proven

Brunjes-cross/Like

reserves and recoverable reserves were well defined.

Q Give me your most optimistic assumption of pipeline construction.

A Beginning date? I can't comment on how long it's going to take to get to the proven reserves, recoverable reserve aspect. But probably from that time-- there are two -- two main timings on this as far as getting a pipeline in place. One has to do with the permitting process and the right-of-way acquisition. And that could take two years.

Q Would you agree with me that no pipeline construction could begin before at least two years from today; isn't that right? And perhaps even more?

A That sounds reasonable.

Q Could be even more, right?

A Could be more.

Q And any arrangement with respect to entering into the construction contracts or financing contracts would take place after you made the decision to go into pipelines; isn't that right?

A That would seem reasonable.

Q Are you assuming, then, that the cost of money to you, two, three or four or whatever numbers it takes before you are ready to put a shovel in the ground and to get your financing is going to be 11 percent?



8

1

Brunjes-cross/Like

2

3

4

5

6

7

8

9

10

11

A No. As one proceeds in time here — certainly if we had not made a decision, say, two years from now, there would be a lot more information that would be known; that we wouldn't be going back to '76 cost of capital. We would update our information as to the latest —

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q So one of the key variables in your economic analysis, namely, the discount rate of 11 percent, is one that could be subject to considerable upward adjustments at the point when you became ready for financing; isn't that right?

A Or downward adjustment. It would affect the tanker, the other transportation modes as well. It would probably even affect the cost of the platform, the price of the oil, the cost of refining, and our own paychecks.

Q If the discount rate of the cost of money for pipeline construction went up above 11 percent, that could bias the analysis against the pipeline alternative; isn't that correct?

A Yes. If it went up, it could bias it more in favor of the pipeline.

Q And you —

A Wait a minute. I am sorry on that. I really can't say that because we are taking pipelines and we are comparing them to marine, and we are moving pipelines up

Brunjes-cross/Like

and down with some kind of change in future cost of capital and we haven't said anything about marine transportation changes.

Q Have you made an analysis of the comparative cost of -- for marine transportation and for pipelines?

A Marine transportation costs in this study are based on what one could hire transportation -- hire for long term. And the rates at which one would be able to hire would have to have built into it by the tanker owner-operator cost of capital. So that one cannot hold the tanker costs constant and then maneuver pipeline costs up and down. To be fair, one would have to test the effects on both.

Q And you would have to look in the marketplace to see what had happened to tanker rates between now and two or three years hence and you would have to look at the marketplace and see what the cost of money is going to be at that time; is that right?

A As one nears the point of making a long-term decision, a long-term investment decision, it would seem prudent to pull together all the latest and best information of all the alternatives available at the time to make the right decision. Yes.

Q Another economic assumption that you make is that capital cost in 1976 is 11 percent, and in 1977 is



1799

Brunjes-cross/Like

9 percent, 1978 is 7 percent, and it continues to decline through the year 1981, and from that point on it remains level at 5 percent. What do you mean — what does that series of declining percentages mean, Mr. Brunjes?

A Just what they mean. The forecast that decline down to 1981 and 5 percent thereafter.

Q Decline of what? Are you suggesting that the inflation rate will decline in this manner?

A I believe that's built into it.

Q So you — as part of your estimates, you are forecasting that the inflation rate will go down from 11 percent to 5 percent in 1981.

A I said the inflation rate was built into that.

Q But you are assuming —

A I didn't say that was the inflation rate.

(continued next page)

2 Q But what is that percentage that is expressed  
3 at page 267

4 A That's the cost of capital. Assumed cost of  
5 capital.

6 Q What is the basis for your forecast that the  
7 cost of capital will continue to decline from 1976 through  
8 1981 and will then remain level at 5 percent?

9 A The basis of that -- the source of that is  
10 internal corporate forecast done by financial -- by financial  
11 experts. And it was not developed by myself.

12 Q So you --

13 A I am not an expert economist.

14 Q I see. And if that estimate of the -- of  
15 declining capital costs is inaccurate, then that affects the  
16 economic studies as well; isn't that so?

17 A The economic studies of all of the forms of  
18 possible modes of transportation, yes.

19 Q Coming back to page 2, you also state that  
20 another factor which you did not consider was pollution  
21 hazards? What did you mean by that and what qualitative  
22 estimate can you give us as to how pollution hazards might  
23 affect cost and economics of pipelines versus tankers?

24 A First of all, what this says is, the pollution  
25 hazards -- what we are saying here is pollution hazards have



Brunjes - cross - Like

not been quantified in this report. And it identifies what is in the report and what isn't in it. That's what we mean.

Q Do you have any notion as to the magnitude in dollar terms of pollution hazards that you're referring to on page 2?

A No, I have not.

Q All right. You also say that another factor that you did not take into consideration in your analysis is reliability. What did you mean by that?

A Again, different transportation schemes or any comparison of two similar type of things, one ought to take a look at the reliability of both of the relative reliability of various modes to make a fair comparison.

Q What might affect the reliability of pipelines?

A Off hand, I don't know of much that -- I know hardly of anything that would. Pipelines are very reliable.

Q You are the pipeline expert, Mr. Brunjes?

A I am a pipeline planning expert.

Q Are you aware of any major OCS accidents that were associated with pipeline transportation of oil?

A I don't recall any. And I am not sure I know what you mean by pipeline accidents. Do you mean the point at which the pipe goes between the two or the pipe in a

1 terminal facility.

2 Q The pipeline used in OCS operations to trans-  
3 port oil from the well to the shore. You are not aware of  
4 any of that?  
5

6 A I am not offhand aware of any accidents. I am  
7 sure there are or have been some.

8 Q Well, let me read to you from the CEQ report of  
9 April, '74, a quote on page 168.

10 "Four of the 43 major OCS accidents were  
11 associated with pipeline transportation of oil. Two breaks  
12 were caused by anchor dragging. The pipelines were not  
13 adequately buried. One was the largest rupturing from OCS  
14 operations. It released 160,000 barrels and was not detected  
15 for 10 days.

16 MR. LAPITTE: Your Honor --

17 Q Are you aware of those instances?

18 MR. LAPITTE: I object to the question. I  
19 understand that the witness is on cross-examination,  
20 but I really don't see how this line even relates to the  
21 credibility of this gentleman testifying as a planner  
22 of a transportation system.

23 THE COURT: I will permit it.

24 You may answer.

25 THE WITNESS: I do not recall those things. But



I would point out that in the feasibility study that it is assumed or that costs were involved in burying pipelines.

Q We are talking about reliability now, Mr. Brunjes. And you said you could hardly imagine anything that would affect reliability of pipelines? Isn't that what you said a little while ago?

A Yes.

Q Is a pipe rupture an example of an event which might be indicative of a problem of replacement?

A Let me --

Q I just want to --

A I really wasn't finished.

MR. LIKE: Your Honor, I have -- a new question was put to the witness and --

THE COURT: I will allow him to answer. He is entitled to answer. He is an expert.

Go ahead.

THE WITNESS: When you say pipeline, I am not too sure that that doesn't involve pipeline manifold on platforms and pipeline plan of pipes, short pieces of pipes that are at shore terminals and things like that. So I am not --

Q Whatever pipe it is, is it part of a pipeline

Brunjes - cross - Like

system used in OCS operations?

1804

A The pipeline planning that I get involved with is not the piping on a platform. It is pipelines that moves oil from one location to another. Generally, a fair distance. Not from one side of a platform to another and not from a well to a manifold.

Q Then you don't consider yourself an expert to testify as to reliability problems with that other type of pipe that you say you don't deal with.

A That type of pipe is involved in exploration and production activities and design of platforms and things of that nature, and that is out of my area.

Q But are you aware of problems of reliability in accidents to those types of pipes?

A I am not aware of reliability problems. I just don't know. That's not my area of activity.

Q I see. Now, page 3 of the transportation report, you make this statement:

"This study is essentially a 'desk study' in nature since all concepts, assumptions and estimates are based solely on information gathered from available maps of the area. Prior studies relate to the areas environment and ecology and other available published matter without benefit of on site investigative research. Since many conditions which



1  
2 could seriously effect facets of the study have yet to be  
3 defined by the state and Federal authorities, the study  
4 concepts are limited to known and published information  
5 at the time of the study."

6 What are the many conditions that you refer  
7 to which you say could seriously affect facets of the study  
8 and which have not yet been defined by state and Federal  
9 authorities?

10 A One facet that occurs to me is possibly that  
11 you know, any local entity, a county, any state government,  
12 could adopt regulations or laws that would affect the  
13 routing of the pipeline.

14 Q Anything else that you can think of, Mr. Brunjes?  
15 You mentioned the local -- an example of a local action.  
16 But your report specifically refers to state and Federal  
17 authorities.

18 A I believe in this context it states that pretty  
19 generally. And it means a state level or within a state, whether  
20 township, town, local zoning or whatever.

21 C In the course of your experience, have you had  
22 occasion to do pipeline planning and to come in contact with  
23 the various Federal, state and local authorities who have  
24 responsibilities regarding the pipelines?

25 A In the state of New Jersey, no. Direct contact,

7  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

no.

Q All right. You have had such experience in some other states?

A Yes.

Q What state?

A Oh, Indiana, Illinois, Michigan. Recently, California.

Q And in the course of your experience in those states, did you confront Federal authorities who had some say about one aspect or another of the pipeline?

A Not Federal authorities, no.

Q What authorities did you encounter?

A Coastal zone planning commission, regional coastal zone commission in California.

Q Is that the only one?

A That's the only one recently.

Q Have you encountered other coastal zone authorities who had responsibilities or regulatory control with respect to pipelines?

A No direct contact.

(Continued.)



1  
2 Q Are you able to tell us, then, what is meant  
3 here by facets of the study that have yet to be defined by  
4 Federal authorities?

5 A I believe in general terms that there are  
6 laws, regulations that are in fairly constant state of  
7 evolvement, and while I am no expert in the area I believe  
8 that there are -- like EPA regulations that are continually  
9 being reviewed and promulgated, and that one, youknow, should  
10 not make any decision on until they get to the point or near  
11 the point of making the decision and then try to determine  
12 what all of the latest laws and regulations and likely  
13 regulations that would be involved that would affect the  
14 pipeline.

15 Q Besides from the Federal EPA, what other  
16 Federal authorities are you aware of who have regulatory  
17 responsibility with regard to pipelines?

18 A Well, there is the OCS, the ICC, the Department  
19 of transportation.

20 Q Can you tell us more specifically what the  
21 Department of Transportation regulatory concerns are and tell  
22 us what the ICC responsibilities are?

23 A The DOT responsibilities are generally in the  
24 area of safety.

25 Q Meaning that they would look at the design of

Brunjes - cross - Like

the pipeline in some fashion?

1808

A That is correct.

Q What types of requirements might be imposed by the DOT with respect to a particular pipeline?

A Not with respect to a particular pipeline. The DOT design and regulations govern the design and operation safety of pipelines.

Q Did you say earlier that that was a subject that was in a state of flux and evolving?

A I said in general that I believe, like there's a Federal register, you know, published almost every day that have dockets by Department of transportation, by other agencies. That's what I mean by changing.

Q You also --

A I don't think a day goes by that regulations don't change in some fashion somewhere.

Q Well, you mentioned the Department of Transportation and the OCS. Are you referring to a specific division within that Interior department that has pipeline responsibility?

A No. In general terms.

Q Well, isn't it the Office of Pipeline Safety of the Department of Transportation that regulates pipelines?

A I believe I said the Department of Transportation



1809

is concerned with the safety -- involved in the safety of pipelines, which you said the office of Pipeline safety is in the DOT. So, yes.

Q That's right. Isn't it the geological survey within the Interior department that also has regulatory jurisdiction over undersea oil and gas pipelines?

A That's correct.

Q And isn't it true that there are two separate sets of safety standards for the same pipelines: one that is published by the office of pipeline safety and the other that is published by the geological survey?

A I am not sure that that is correct. I believe it is. I think it is.

Q And are you aware that there has been a dispute between the Department of Transportation and the Interior Department because of this disagreement and dead locks between them with regard to who has authority to set safety standards for an inspection of off-shore oil and gas pipelines?

A I am not aware that there is any major disagreement among the two. I would point out that pipelines through many locations -- there are regulations or design criteria that are imposed by maybe state agencies. There is also -- an overlap with requirements by the DOT. And that one

1  
2 has to generally design to meet the major stringents of the  
3 two overlapping design criteria.

4 Q So if the Federal and state jurisdiction of the  
5 pipelines are concurrent and both have to be complied with;  
6 is that right?

7 A I said there are examples. And where that  
8 occurs, I cannot speak to that being universal at all.

9 (Continued.)  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1  
pat  
ppe  
PM

1811

Brünjes - Cross/Like

1015

1  
2 Q You said you had experience in California with  
3 a pipeline problem; is that right, or pipeline project?

4 A I think the question was the direct contact with  
5 local, state, or Federal groups, yes.

6 Q In the California experience, did you come in  
7 contact with the Federal Department of Transportation?

8 A No, I did not.

9 Q The Geology Survey?

10 A No, I did not.

11 Q What was your responsibility there; you're a  
12 pipeline planner right?

13 A I think the question is, though, more appropri-  
14 ate what was the USGS responsibility there. I was involved  
15 with a pipeline going from a pier facility inland and not in  
16 the USGS area.

17 Q In other words, not an OCS pipeline?

18 A I think you assumed that.

19 Q In any event, in arriving at your cost estimates,  
20 you did not attempt to make any estimate at what it would  
21 cost to comply with the requirements that would be applicable  
22 or that were in the process of evolving and which might become  
23 applicable from a pipeline from the Sale 40 Area in some future  
24 year?

25 A To even approach that, first, one would have to

Brunjes - Cross/Like

define what would be very likely to become applicable and that gets us into another Never Never Land at this point. I think it would be in my opinion somewhat inappropriate in the first phase of the feasibility-type of effort.

Q If the requirements of pipelines changed as they probably would, according to your own past experience of a continuously evolving area of law, then you would have to comply with the requirements as they existed at the time that you started to build the pipeline?

A I think we're getting into --

Q Isn't that correct?

A We're getting into a legal area and I am generally aware that some regulations get passed with retroactive provisions, others have some compliance dates in the future. I think it would be very hard to define.

Q I realize that. Isn't that what your report precisely says "since many conditions which could seriously affect facets of the study have yet to be defined by the state and Federal authorities, the study concepts are limited to known and published information at the time of the study?"

A I think that's generally correct.

Q You were excluding from your analysis what might have been in the form of new regulations and requirements affecting pipelines in the future, correct?



phrase questions that can be answered succinctly.

My question had to do with getting information as to the nature of the economic asset.

THE COURT: Let's hear what he has to say.

A (continuing) The purpose was to identify there was a sensitive point here and that there was no attempt made to do an economic analysis in this feasibility study. I think, if one got into that, that would be more so when one gets into more the routing as this thing evolves.

Once oil is found, one starts trying to select precise routings and then try to develop all the environmental factors and impacts and things of that nature; this report, certainly, does not even allude to touch on those things. It's just a statement identifying that is an area where oysters are produced and it has an effect on the economy of that area, no more, no less.

Q On page 43 of the T-252, the following statement is made:

"As this study progressed, it became more and more evident that before final selection of a crude oil transportation system is made for the mid-Atlantic-Baltimore Canyon, any aspects would require further extensive in-depth study. Below are list items which would require more detail study before a transportation system can be properly designed for the

1814

mid-Atlantic area.

"One, detailed surveys and studies of the sea bottom topography and investigation of the potential problems of sand waves, cemented sands and bottom scour must be made before final selection of pipeline routes are made in this area."

What sea bottom areas would be surveyed and studied and investigated in this detailed manner?

A (no response.)

Q Would you please indicate by approaching the map what areas of the Atlantic would be surveyed in this fashion

A One would select the most likely routes. We're getting into the process of evolvement here as one determines production and levels of production and gets more down the line of trying to identify the major alternatives.

Then one would try to take those major routings. That is where the survey would be made.

Q For example --

A It would not be prudent today to go out and follow those lines on the map and make sea bottom surveys when one hasn't identified those are absolutely the way to go.

Q In other words, the nature of the detailed investigation would depend upon the pipeline route that you had selected; is that right?



9

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A It would be a process, a tandem process, if you will, generally side by side. The sea bottom information would help select the route, but you would have to have a good idea of the routing before you do the seabed survey.

Q The results of that investigation might cause you to modify or even abandon a particular pipeline route if you found the conditions were too formidable or too costly to resolve; is that right?

A That would be the general purpose as I would understand it.

Q When you put this hypothetical line on your map, you certainly cannot indicate today this is feasible from the standpoint of geology or from the standpoint of sea bottom topography or the standpoint of all the factors which govern the installation and burial of pipelines; isn't that correct?

A That's why that is in the report, being part of the report do identify areas that further detailed study was needed. That's the purpose of this section, to identify or to list those areas and draw our attention to those areas.

Q The areas that you have to make further detailed studies of, and the results of those detailed studies then become inputs inot making any final decision on whether to use tankers or pipelines; isn't that correct?

A That's correct, but no surveys would be made

1 unless it was demonstrated there was a need for transportation  
2 to start out with.

3 Q Right. That would depend upon the exploration  
4 effort.

5 A That is correct.

6 Q You go onto say that detailed studies needed  
7 by on-site investigations of land pipeline routes must have  
8 been made together with an analysis of permanent and right of  
9 way requirement before final selections are made. I believe  
10 you touched upon this before.

11 A I think we did, yes.

12 Q The on-side investigations would also lead you  
13 to check on particular terrain problems. I believe you men-  
14 tioned wetlands, problems of crossing recreation areas, parks,  
15 refuges, beaches, so forth; isn't that right?

16 A Right.

17 (Continued next page.)

18 3/2PM  
19 follows



1  
/2PM  
legge  
S/pat

1817

Brunjes - Cross/Like

1025

1  
2 Q You would have to check out not only whether or  
3 not there were any legal constrictions or consents necessary,  
4 but you would have to determine whether or not there were any  
5 construction problems that would be unusual or particularly  
6 costly; isn't that right?

7 A That's right. In general, to cross extensive  
8 areas like that, very extensive information must have been  
9 developed as to the environmental effects of that particular  
10 crossing site for the particular size line of the particular  
11 construction activity one is advocating.

12 Q Coastal zone management plan, if it had been  
13 approved prior to your investigation and right of way planning,  
14 you would have to look to see what the particular requirements  
15 are of the Coastal Zone Management Plan to make sure that you  
16 fit in and comply with those requirements?

17 A Right, for the particular location that we would  
18 want to look at and from a particular type of construction  
19 that we would settle on.

20 Q The Coastal Zone Management Plan also requires  
21 either modification or might completely prohibit the particu-  
22 lar locations for pipelines; isn't that correct?

23 A Sounds reasonable. I would hope, though, it  
24 would be one of a dialogue and not a simile process without  
25 due discussion on the matter.

1  
2 "In the case of offshore New Jersey and Delaware,  
3 the potential fields are a substantial distance seaward (more  
4 than 80 miles) and pipelines may not always be economically  
5 justified especially during initial development stages. It  
6 would be feasible to start producing into a storage tank and  
7 using tankers to ship the oil ashore."

8 Would you agree with that statement, Mr. Brunjes?

9 A It certainly is not quantitative in nature. I  
10 guess I could say it's not out of the realm of possibility,  
11 but there are many possibilities here. One would have to con-  
12 sider the trade-off in the course of this storage and I believe  
13 one would then have to, perhaps, even size the platform struc-  
14 ture larger so that it can accomodate the weight of storage  
15 or temporary storage and you would trade that cost off against  
16 maybe, construction of a pipeline a year earlier than when its  
17 full utilization might be realized. There are trade-offs  
18 involved.

19 Q One of the economic factors that would be  
20 taken into account, am I correct, would be whether or not  
21 it was desirable and economically justified to use tankers  
22 during the initial development stages; isn't that correct,  
23 irrespective of the outcome, ultimate construction of pipelines?

24 A I have a hard time on tankers in that I would  
25 feel that there would be quite a substantial one-time cost on



5 1 tankers, on getting them tied up or moored to an area of a  
2 platform. Many millions of dollars just for a temporary  
3 operation. I can't deny it or justify it. I just point out  
4 there are substantial monies involved in what we're describing  
5 here as some temporary measure.  
6

7 Q You would agree that there could be circumstan-  
8 ces in which the statement which I've read to you would be  
9 a realistic assessment?

10 A I could not rule out that similarly, no.

11 Q It goes on to say "there are some advantages  
12 to tankering nominal quantities of oil when compared to the  
13 disruption that pipeline construction may cause; isn't that  
14 correct?

15 A I don't know what they're getting at there at  
16 all.

17 Q If you look at page 64, under the paragraph  
18 entitled "Tankering," I read "it is feasible and sometimes  
19 economical to transport oil produced at offshore fields directly  
20 to refineries by the tankers rather than by pipelines. The  
21 practicality of such a system depends upon many variables such  
22 as distance from the offshore fields to refinery, amount of  
23 oil produced, cost of pipelines, status of field development,  
24 number of wells and platforms producing, cost of offshore  
25 storage and loading terminals, gas mixture and pollution

fw

Q And in making any estimate of what future tanker cost might be, you would have to look at the status of the tanker market to see whether or not there was idle tank capacity, whether the supply of tankers exceeded the demand and whether charter rates, spot and long-term, were going up and down.

A And many other facets.

Q Are you aware that the world tanker market as of last year and this year is regarded as being in one of the worst slumps in its history?

A That is the foreign flag market. That doesn't have a lot to do with this transportation that we're talking about here.

To follow up on that, I am aware that there is an extensive tanker construction program to add to the United States crude oil tanker fleet for transportation of Alaskan crude oil, and to show that the world surplus has no effect on U.S. transportation, there are two fleets. You cannot take a foreign flag and inject it into a United States fleet.

Q Does Shell have a tanker fleet?

A No.

Q Does Exxon?

A I believe they do.



Q Do any of the other oil companies that are successful bidders to Lease Sale 407

A I would say generally, yes.

Q Do you know how many tankers Exxon owns?

A No.

Q A considerable number?

A I don't know what a considerable number is. I think they are probably fairly significant tanker owner-operators.

Q Would you agree with this statement, and I'm reading from the New York Times of April-- January 2, 1975.

"Major oil companies in general own enough ships to handle about fifty percent of their requirements."

A Would you please repeat that?

Q "Major oil companies in general own enough ships to handle about fifty percent of their requirements."

MR. LAFITTE: I object to further questioning on this line. He testified that he doesn't know how many tankers are owned. Mr. Like--

MR. LIKE: He had no hesitation to talk about Alaska or surplus.

THE COURT: Sustained. Let's bring this to a

1  
2 close. I think we're getting to the point where  
3 it's not productive.

4 Q I'll just ask then a few more questions re-  
5 garding the likelihood that companies like Exxon would use  
6 their own tankers or whether they would opt to build pipe-  
7 lines.

8 If a company such as Exxon, which is a major  
9 bidder in the Lease Sale 40, has idle tank capacity avail-  
10 able at the time it becomes necessary to transport crude  
11 oil from the Sale 40 wells to shore, are you in a position  
12 now to predict whether or not Exxon will use its own tankers  
13 or whether it will build a pipeline if it finds it more  
14 economic to use tankers?

15 A Whether they would hire tankers, that is  
16 certainly a very specific question. I can't answer that.

17 Q In fact, any company which owns tankers and  
18 which may have idle tank capacity may decide to use its  
19 own tankers rather than pay the cost of a pipeline; isn't  
20 that true?

21 MR. JENSEN: The lease stipulation says that  
22 the pipelines were to be used except where they  
23 proved to be not economically feasible. It's not  
24 merely a question one form is more advantageous  
25 over another. I think these questions



1  
2 MR. LAFITTE: I object to the question.

3 THE COURT: Sustained.

4 MR. LIKE: I will ask your Honor to take judi-  
5 cial notice of the proceedings that are pending by  
6 the federal Trade Commission, Docket No. 8934,  
7 Matter of Exxon Corp., Part D, subjects and support-  
8 ing justification to transportation, marked T-220-A  
9 for identification, and I have read from page 119,  
10 which sets forth the charges that the FDIC has made  
11 with respect to those charges

12 THE COURT: What's the date of the  
13 document?

14 MR. LIKES: It arises from a lawsuit referenced  
15 in the complaint, and I believe it was -- the lawsuit  
16 was definitely commenced before the issuance of the  
17 final environmental statement. I believe there was  
18 also more detailed pre-discovery statement by the  
19 FDIC staff which outlines the specific charges  
20 against the various oil companies.

21 MR. LAFITTE: I would object to the offer  
22 as totally irrelevant to the issues.

23 MR. LIKE: It has the relevance--

24 THE COURT: I'll take judicial notice that  
25 there is such a suit pending.

Q Would you agree, Mr. Brunjes, that antitrust actions might have a bearing upon decisions to use pipelines or tankers and might influence the cost of either of the modes of petroleum transportation?

MR. HYMAN: Objection.

THE COURT: Sustained.

MR. LIKE: The witness has identified--

THE COURT: Please, bring this to an end.

This man is a planning man. You're getting into other areas. If you don't, I will cut it off.

Q To sum up, then, Mr. Brunjes, would you agree that whether petroleum actually is present and in economic quantities in the Sale 40 area, can only be determined by deep exploration drilling?

MR. LAFITTE: Your Honor--

THE COURT: Don't answer that. It has been asked and answered dozens of times.

Q In view of that uncertainty and in view of the other variables which you have identified in responses to cross-examination questions, is it possible to state at this time with reasonable degree of certainty, that pipelines and not tankers will be used to transport Sale 40 crude oil to shore from all wells in the Sale 40 area?

A I'm sorry, would you read that again, the



first words on there, assuming something, or given something. I'm not sure that I quite understand what you're referring to there.

You're referring to something initially in that statement, given certain uncertainties.

Q Are you aware of any-- I will withdraw that question, your Honor.

Are you aware of any standards that have been issued by the Secretary of the Interior making an evaluation of when pipelines are deemed to be economically feasible?

A No, I'm not.

Q Was the type of study which was performed in your office, namely, the transportation supply study-- the cost study -- the type of study that could be performed by persons possessing the same skills as the persons in your organization whom you have identified as having supplied inputs?

MR. HYMAN: Objection, your Honor.

THE COURT: Overruled.

MR. HYMAN: May I be heard?

THE COURT: No.

MR. HYMAN: They have had--

THE COURT: No.

IF you can answer it, answer it, otherwise say

1  
2 you can't answer it.

3 A Persons with similar backgrounds and experience  
4 and degree of expertise would seem not to be out of the  
5 question that similar type studies could be performed, not  
6 for Shell, though.

7 As we talked before, there are certain aspects  
8 and philosophies as to how we view our business that others  
9 wouldn't have this. Others couldn't take our same expertise  
10 from outside and duplicate this study.

11 Q For the record, give us the types of expertise  
12 or disciplines that were represented and who participated  
13 in this key effort that you have described earlier to  
14 produce this study.

15 THE COURT: Sustained.

16 Are there any further direct?

17 MR. LAFITTE: I have only one point.

18 THE COURT: Be brief.

19 MR. LAFITTE: May I question from here?

20 REDIRECT EXAMINATION

21 BY MR. LAFITTE:

22 Q Mr. Brunjes, was the company's information  
23 developed under your supervision and about which you  
24 testified factored into the bids that were made by Shell  
25 Oil Company for leases in the Sale 40 area?



1  
2 A Yes, sir.

3 MR. KAUFMAN: I think that is an irrelevant  
4 question.

5 THE COURT: It is not.

6 A Yes, this information was factored in.

7 MR. LAFITTE: Your Honor, I have here a  
8 copy of pages 28, 29 and 30 from the Oil and Gas  
9 Journal of August 3, 1976, which has been used here  
10 extensively, which shows-- I respectfully request  
11 the Court to take notice Shell paid 243-- \$224,400  
12 at the Sale 40, that it paid a total amount  
13 \$83,503,560 in high bids, and received 12 leases  
14 out of 38 tracts bid on.

15 THE COURT: I notice it.

16 MR. LAFITTE: I would like to have this marked.

17 THE COURT: Mark it.

18 THE CLERK: Defendant's Exhibit T-5K in  
19 evidence.

20 THE COURT: Based on the last question, you  
21 were aware at the time that you drafted this report,  
22 that this was a matter of considerable importance  
23 on which hundreds of millions of dollars might be  
24 invested; is that so?

25 THE WITNESS: That's right. This would be

one part of the input factored in.

THE COURT: Based upon this, generally available, I take it, apart from the philosophy of your company, you were able to predict fairly closely the landing sites and best routes to Philadelphia?

THE WITNESS: I would say so. These would seem to be reasonable. I think experienced people would tend to line out the most suitable tracts or identify them without too much effort.

THE COURT: Possibly with expertise, certainly some of those available to the Government, would based on your general professional knowledge, come to roughly the same conclusion, would they not?

THE WITNESS: Yes.

THE COURT: The economic and other factors are those that you can't avoid, isn't that so?

THE WITNESS: That's generally correct, yes.

THE COURT: All right. That will be all.  
Thank you very much.

MR. HYMAN: I have a question, your Honor.

THE COURT: I asked whether there was any further direct. Go ahead. I'll permit you a very brief direct.



## REDIRECT EXAMINATION

BY MR. HYMAN:

Q You testified that you had input into picking the origin of the pipeline in the OCS from your geologists working for the company.

A That is correct. As far as the origins that were selected to do the study these origins were determined by the exploration and production division of the company.

Q And the company, Shell Oil Company, had certain proprietary information which they had specifically in Shell which was quite confidential which you keep in your safe; is that correct?

A That would be in exploration and production division. I have no certain-- It would seem so, but I could not really say one way or the other.

Q And a geologist working for an oil company is a highly skilled and trained individual?

A I understand geologists are well paid and very well skilled in their area.

Q And that report, the one that you produced here in court, was not available to the general public in the spring of 1976?

A No, this was very proprietary in nature within the company.

1  
2 Q I noticed on cross-examination and on  
3 direct examination you used certain words. I didn't take  
4 down the specific words that you used, but it must be some  
5 sort of trade words. You used the words pipeline, rights-  
6 of-way, what does that mean in the trade?

7 A That means the land-- the easements, the  
8 paths over which or under which the pipeline would traverse.

9 Q And if there were some language in the lease  
10 that Shell bought that said a feasible pipeline right of  
11 way can be determined and obtained, what would that mean  
12 to a right of way man?

13 A The statement said that--

14 Q If feasible pipeline rights of way can be  
15 determined and obtained.

16 A What that would mean to a right of way man  
17 that there is some degree of uncertainty that it was  
18 not the exact routing was comprehensively reviewed and devel-  
19 oped to make sure that all parcels of land were available  
20 for a particular routing. It would say that a lot more  
21 work would have to be done.

22 Q When you say available for a particular  
23 routing, what does that mean to you?

24 A That one--

25 THE COURT: Don't get into this, please,



1 THE COURT: I do.

2 MR. LIKE: I am prepared to. I am cognizant  
3 that everyone is tired.

4 THE COURT: Show it to your opponents.

5 We will take a five-minute recess.

6 (Recess taken.)

7 MR. LAFITTE: If the Court please, the ques-  
8 tion is-- which I would like to propound to  
9 Mr. Brunjes by redirect was prompted by your Honor's  
10 question.

11 THE COURT: Where is Mr. Brunjes?

12 Ask the question from there.

13 REDIRECT EXAMINATION

14 BY MR. LAFITTE:

15 Q Mr. Brunjes, the pipeline route shown as 1-A  
16 is the route that prevalent-- that was covered in your  
17 cost studies?

18 A That's correct.

19 Q The point where that route enters the coast-  
20 line of New Jersey could have been moved ten miles north  
21 or twenty miles north and would it have made any difference  
22 to your cost estimate?

23 A No, it would not have. That line depicts  
24 a general area, coming into that general area, give or  
25 take several miles.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q It's an example.

A That's right, it is an example.

Q And the line shown is Route 2, which comes down the south of Cape May, is that an example route?

A That is also an example route, as far as where it reaches landfall it would vary one way or another.

Q It would be moved westerly ten or fifteen miles or easterly ten or fifteen miles?

A Without affecting the cost numbers.

THE COURT: Thank you.

Let's have this witness.

(Continued on the next page.)



2 MR. KAUFMAN: Your Honor, before the witness  
3 starts, I just want to show you that some of the  
4 documents that you asked for the other day from  
5 the planning officials in New Jersey have begun  
6 coming in, showing the towns and the zoning codes and  
7 all of the other information that you asked for.

8 THE COURT: Put them all together. I don't  
9 want them in drips.

10 All right, swear the witness.

11 G E O R G E L. D O N K I N, called as a witness, being  
12 duly sworn by the Clerk of the Court, testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. LIKE:

16 Q Mr. Donkin, did you receive from the county  
17 of Suffolk an assignment to prepare supplement testimony  
18 and to testify at the trial in this proceeding?

19 A Yes, I did.

20 Q And did you make a study of the investment  
21 costs associated with the findings and transporting of oil  
22 and gas from sale 40?

23 A Yes, I did.

24 Q Did you also make an investigation of the  
25 peak production levels and the probability that the -- and

the probability of the reserve estimates presented to the Secretary for his evaluation?

A Yes.

Q And was the purpose of your investigation determine whether the Secretary underestimated the cost and overstated the benefits?

A That's correct.

Q What data sources did you consult which were available to the secretary prior to May of 1976?

A I consulted and used in my study data sources from the Federal Power Commission, data sources that had been prepared by petroleum consultants and submitted as part of the official record in Congressional hearings, and data sources prepared by major oil companies which were submitted to the natural gas survey. All of these sources were readily available in the public domain.

Q Did you also review the final environmental statement for sale 40 and in particular -- withdrawn. Did you review the alternative sections of the final environmental statement for sale 40?

A Yes, I did.

Q Did you review the alternative section of the program -- programmatic environmental statement for accelerated leasing?



Donkin - direct - Like

1835

A Yes.

Q As a result of your study and investigation, did you prepare certain exhibits which described the details of your analysis of the cost benefit issue that you are addressing today?

A Yes. I have prepared a number of exhibits. These are contained in one packet. I identified each exhibit by a topic with my initials, GLD-1 and GLD-2, etc., through GLD-10.

MR. LIKE: Your Honor, there has been offered exhibit T-250 for identification which your Honor has before you. I have asked counsel for the other parties to detach the last exhibit. Yours has already been detached. For the reason that it bears a date after May of 1976. There are other exhibits here which also bear dates after May of 1976, but when we reach them I will offer them as being admissible for other reasons that have no relevance to the cut off date.

Q Turn to the first page of your exhibit, which is entitled, GLD-1, and the caption is, Interior Department Estimates of the cost of finding hydrocarbons for the OCS sale 40 acreage for the low reserve estimated case. Will you tell me what the purpose was of preparing this exhibit?

A The purpose of preparing this exhibit was to

1  
2 compare the Interior department estimated cost against cost --  
3 finding costs estimates that I was aware of and that many  
4 economists, geologists and petroleum engineers familiar  
5 with searching for oil and gas are also aware of.

6 Q What was the Secretary's estimate of the cost  
7 of finding hydrocarbons in the low reserve estimated case?

8 A Converted to millions of Btu's, it's 12.26  
9 cents.

10 Q That is the figure which appears at the foot  
11 of the right hand column; is that correct?

12 A This is correct.

13 Q And does that represent a figure which was  
14 derived by you from some document issued by the Secretary?

15 A Yes. The source of this exhibit is page y  
16 of the PDOD for sale number 40.

17 Q Will you turn next to page 2 of your exhibit 1.  
18 This is entitled, Interior Department Estimate of the Cost  
19 of finding hydrocarbons for sale OCS which is for the high  
20 reserve estimate cost. Will you tell us what the purpose of  
21 this exhibit is?

22 A The purpose is similar to that of page one of  
23 two. The interior department presented two total investment  
24 estimates for the sale 40 acreage. I prepared a separate  
25 exhibit for each of those total investment estimates. And in



1 the high reserve case of 1.4 million and 9.4 trillion cubic  
2 feet. These reserve estimates and investment cost estimates  
3 relate to a finding cost of 14.5 cents per million btus.  
4

5 I would like to add at this point that these finding  
6 cost estimates are unrealistically low relative to recent  
7 industry experience.

8 Q Before you proceed to explain how you reach that  
9 conclusion, let me just recap this now.

10 On your first page you found the Secretary  
11 estimated that the cost of finding hydrocarbons in the low  
12 reserve case of .4 million barrels of oil, 2.6 trillion cubic  
13 feet was 12.26 cents; is that correct?

14 A That is correct.

15 Q On the second page, where you take the high  
16 reserve case, with an estimated reserve of 1.4 million  
17 barrels of oil and 9.4 trillion feet of natural gas, the  
18 secretary estimated costs of finding those minerals was  
19 14.50 cents; is that correct?

20 A That is also correct.

21 Q For a million btus?

22 And you have now testified that the secretary's  
23 cost are unrealistically low; is that correct?

24 A That's correct.

25 Q Will you explain, by moving on to your next

Donkin - direct - Like

1838

exhibit the sources on the basis for your finding that the secretary's estimates were unrealistically low?

A Yes. My exhibit two -- I would prefer to identify this as exhibit two as opposed to GLD-2 simply because it's simpler.

It presents the estimated costs of finding new crude oil in the lower case, the 48 United States as of 1974, and the bottom line -- that's the far right hand column it shows that in that year new crude oil reserve costs approximately 32.86 cents per million btus to find.

Q Now, what estimates by the secretary are you contrasting that 32.86?

A That could be contrasted with either the low reserve estimate or the high reserve estimate case. In the first event, the finding costs for new oil would be approximately 168 percent greater than the Interior department estimate.

In the second instance, the finding costs would be approximately 127 percent greater than the Interior department estimates.

Q What was the data source that gave you the information from which you reached the conclusion that the Secretary had underestimated the cost to the extent that you indicated?

BEST COPY AVAILABLE



A The data sources identified at the bottom of this exhibit as the FTC, Bureau of Natural gases staff analysis of the costs of finding and producing new crude oil.

Q And that was dated?

A June, 1975.

Q Did you find any further corroboration from the official data sources that the secretary had substantially underestimated the cost of finding new natural gas, and if you did, would you please call our attention to the specific exhibit that shows that?

A Yes. In September of -- on September 29th, 1975, the Federal Power commission staff submitted a presentation in the nationwide rule making concerning new natural gas prices. That presentation also contains finding costs estimates for new non associated natural gas. Those estimates appear at page 2 of my exhibit number two. And stated in terms of cents per million btus. The FTC staff estimate is 25.66 cents per million btus.

Q How does that FTC estimate of 25.66 cents for a million btus compare to the Secretary's estimate in both the high reserve and the low reserve cases?

A Again, it's substantially greater. Approximately 77 percent greater than the Interior department's high case

Donkin - direct - Like

resource estimate, and one hundred and nine percent greater than the Interior department estimate for the finding cost associated with the low resource estimate.

Q Your exhibit describes this as new non-associated natural gas. Will you tell us, please, what is meant by non-associated natural gas?

A Non-associated natural gas is natural gas that is found in and produced non- in association with crude oil. Generally, when you find crude oil, you will also have either in solution or associated with that crude oil natural gas typically called casing head gas. The PTC, however, in its rate-making recognizes that the cost associated with associated gas would be difficult to estimate. Therefore, they only look at new non-associated natural gas reserves in addition in estimating the finding cost for new natural gas.

Q Do you know whether the Federal power commission agreed substantially with the estimates that have been made by its staff with respect to the finding costs for new non-associated natural gas?

A Yes. It's a question of degree. They had a number of finding cost estimates before them in determining the nationwide rate for new natural gas. And in their opinion, which was dated July 27, 1976. they adopted a total finding



cost.

MR. HYMAN: Your Honor, I have an objection to this discussion of an opinion that the Secretary should have known in the spring of '76 that an opinion by this commission dated in June and July of 1976 and after the final impact statement, and I -- now we are really going to get into a lot of difficulty.

MR. LIKE: Before you rule on this, if you would simply turn to the next page, which is page 3 of exhibit 2, you will note in the lower right hand column the figure 28. 43 which is a few cents higher than the staff's figure which is on the previous page of 25.66 cents.

I realize that the July date is subsequent to the May cut off date. But since it simply confirms as a matter of fact, indicates that the staff's estimate was conservative, being three cents lower, I put it in.

(Continued.)

Donkin - Direct/Like

1842

THE COURT: All right. You may proceed.

MR. LIKE: Your Honor, would you now turn to another subject which is depicted on Mr. Duncan's Exhibit 3, Page One, and the caption of that is Estimated Offshore Large Diameter Pipeline Cost, High Island Offshore System, Gulf of Mexico.

Q Mr. Donkin, would you tell us, please, what the purpose was for preparing Exhibit 3.

A Yes sir. In the Interior Department PDOD for Sale Number 40, they assumed that a large diameter offshore pipeline would cost one million dollars per mile.

In September 8th, 1975, three natural gas pipeline companies submitted an amendment to applications which had been submitted previously to construct facilities in the Gulf of Mexico. This will be a single system owned jointly by these three pipeline companies, very similar in nature and in water depth to the offshore Atlantic -- Middle Atlantic Region. And one can easily from that application calculate the cost per mile as shown at the bottom line, far right hand column of Exhibit 3. That particular pipeline system will cost one million seven hundred and thirty thousand two hundred and ninety-nine dollars per mile, which again is substantially in excess of the Interior Department Investment Cost Estimate for large diameter offshore pipeline systems in the Mid-Atlantic

1  
5/2PM  
Kleppe  
JB/pat



Region.

Q To what dollar extent does the actual experience, cost experience in the Gulf of Mexico for offshore large diameter pipelines exceed the estimates of the Secretary contained in the PDOD for Sale 40.

A It is approximately 700,000 per mile and --

Q In excess --

A In excess of the Interior Department estimate.

One can also relate that to a total investment cost differential in the Interior Department low resource estimated case. They assume 100 miles of offshore pipeline. Therefore, that would convert to a one hundred million dollar expenditure. And in this case it would be one hundred and seventy three million dollars. Therefore, it's approximately a seventy three million dollar underestimate for the pipeline cost. In the high --

Q Just a moment.

All right.

A In the high resource case, I have to make a calculation. The Interior Department assumed 450 miles which would be 450 million dollars as opposed to 780 million dollars that would be required to construct the same pipeline facilities using this Gulf of Mexico cost per mile figure. Therefore, we are talking about a difference of 330 million dollars.

Q 330 million dollars representing the extent to

1  
2 which the Secretary underestimated the cost of building 450  
3 miles of pipeline?

4 A That's correct.

5 THE COURT: What is that? 30 inch pipelines?

6 THE WITNESS: It is not clear from the PDOD.  
7 The statement is a large diameter offshore pipeline.

8 Now, the high island offshore system has various  
9 ents which, if you notice under the second  
10 an of my exhibit three, buried between 30 inches  
11 and 42 inches. The plan capacity of the pipeline  
12 represented by this cost estimate is just under  
13 one billion cubic feet of gas per day. And if you  
14 will notice, I believe it's at page number four of  
15 the PDOD, the peak delivery capacity estimate for  
16 natural gas prepared by the Interior Department is  
17 just over three billion cubic feet per day. There-  
18 fore, it would appear, at least with respect to  
19 gas pipelines, a pipeline of these diameter sizes  
20 at least, 30 inches to 42 inches, would be required.

21 THE COURT: Does it make a difference whether  
22 it's 30 or 42?

23 THE WITNESS: Yes, it does. In fact, that's  
24 obvious from the exhibit wherein the -- in the far  
25 right hand column I make a calculation for each line



Donkin - Direct, Like

segment.

THE COURT: The Secretary doesn't tell you what the diameter is?

THE WITNESS: No, it does not.

THE COURT: Is this about the same course of an oil pipeline or is it different?

THE WITNESS: Your Honor, I understand that it's approximately the same in the offshore area. I made numerous inquiries, I talked to many pipeline -- I shouldn't say many -- to three pipeline experts of the Federal Power Commission and they assured me that in the offshore areas pipelines cost per mile do not vary substantially if at all.

THE COURT: Where is Mr. Brunjes? Is he still here?

MR. BRUNJES: Yes.

THE COURT: How much did you figure cost per mile of a 30 inch pipeline offshore?

MR. BRUNJES: I think the costs were in the area of -- for, say, a thirty inch line, it would be perhaps something in the order of eight hundred thousand to a million dollars a mile.

THE COURT: You're closer to the secretary than --

MR. BRUNJES: I am sorry.

THE COURT: I say, you're estimates were closer to the Secretary which was about seven hundred thousand.

MR. BRUNJES: We have to be careful there. Sometimes pipelines, they don't furnish the power. The offshore facilities furnish it. We have to be careful as to what we say what a pipeline cost. Is it just a line itself or all the engines and installations to pump? If that is included, that can distort the comparison.

THE COURT: Does your figure include pumping?

MR. BRUNJES: Yes.

THE COURT: Eight hundred thousand to a mile?

MR. BRUNJES: Yes.

THE COURT: Including pumping?

MR. BRUNJES: In that general area.

THE COURT: What about your figures, does that include pumps?

THE WITNESS: Well, in the case of natural gas pipelines, the corporate term is compressors.

THE COURT: I am sorry. Compressor.

THE WITNESS: Yes, it does.



6

1

Donkin - Direct/Like

2

THE COURT: Okay.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE WITNESS: And, in fact, if you will notice, your Honor, the 30 inch natural gas pipeline costs are approximately one million dollars, but in addition you have got the compressor complex, plus the offshore manifold platform that are required. All of this raises the total cost per mile.

MR. LIKE: May I confer with the witness for a moment, your Honor?

Q Mr. Donkin, did you get an opportunity during the luncheon recess to examine certain pipeline cost estimates that were contained in the Shell Transportation Survey?

THE COURT: Can we have Mr. Brunjes come up here so that if he's going to be criticized I want him to respond while he is still here.

MR. LIKE: May I have the question read back?

(Record Read.)

THE WITNESS: Yes, I did.

Q And did you make a comparison of the Shell estimates to the cost figures which you had obtained regarding the high island offshore system?

A Yes, I did.

Q Could you please tell us what your comparisons resulted in?

Donkin - Direct/Like

1  
2 A I will preface my response by noting that it is  
3 not possible to compare each item in the Shell estimates against  
4 each individual item in the high island offshore system esti-  
5 mates because many of the component parts are stated in different  
6 terms. However, there were three items where a direct compari-  
7 son could be made. Specifically for a 30 inch natural gas  
8 segment. The coating costs for the high island offshore system --

9 MR. HYMAN: I object. He's comparing  
10 a gas pipeline estimate to an oil pipeline.

11 THE COURT: I just asked him that and he  
12 said they are comparable in cost. I accept his  
13 testimony. If you have other testimony, present  
14 it.

15 Proceed.

16 THE WITNESS: The cost of coating the high  
17 island 30 segments are estimated at \$18.14 per  
18 foot as opposed to the Shell Oil Company estimate  
19 of \$13.00 per foot. The high island system is  
20 approximately 40% greater per foot than the Shell  
21 estimate.

22 The high island survey costs are estimated  
23 at ten million eight hundred and ten thousand --  
24 correction. Ten thousand eight hundred and ten  
25 dollars per mile -- strike the ten million -- as



## Donkin - Direct/Like

opposed to Shell's estimate of five thousand dollars per mile. This is approximately a two hundred and -- or one hundred and sixteen percent -- strike that.

The high island surveying cost estimate is approximately one hundred and sixteen percent greater than the Shell estimate for surveying costs.

And the tide rises for the high island system near the 400 foot depth line are estimated to cost two million seven hundred and eighty-two thousand dollars per mile as opposed to Shell's estimate of one million eight hundred and fifty thousand dollars per mile maximum at the 400 foot water line. Again, the high island system estimate is approximately -- approximately 50 percent greater than the Shell Oil Company's estimate.

(Continued next page.)

JB:EMC1  
SPH/3  
1

Donkin-direct/Like

1067

1850

Q Would you now turn, please, to --

THE COURT: No. Before you do, is that all you are going to say?

MR. LIKE: On that subject.

THE COURT: What is your explanation, Mr. Brunjes, if any.

MR. BRUNJES: The pipe risers that he's compared in it, one cost in certain dollar per mile against another cost in dollar per mile, the riser is the pipe that goes vertically to get up from the ocean bed up to the top, and certainly it wouldn't be a mile high in four hundred feet of water.

THE COURT: No. He's talking about the number needed for a mile. How many of those do you need?

MR. BRUNJES: Only one to get to a platform. This is where a pipeline would be connected to a platform. The pipeline would be under water and would be -- when we talk about a riser, that would be that section of the pipe that goes vertically.

THE COURT: You don't have risers in between.

MR. BRUNJES: No.

THE COURT: What about the coating?

MR. BRUNJES: The coating can be of different thicknesses. And I think it would be hard to make

BEST COPY AVAILABLE



2 1 the valid comparison without getting to specific  
2 thicknesses. It is just not that far off one way or  
3 the other. You can't make a valid comparison there.  
4

5 Then as to the right-of-way hundred percent  
6 difference, but this turns out to be a very -- a cost  
7 per mile difference. So the number of miles involved  
8 -- I don't know the arithmetic, but maybe a hundred  
9 thousand or two hundred thousand dollars difference  
10 in a multi-million dollar magnitude is insignificant.

11 THE COURT: I see. All right. Proceed.

12 Q Would you please turn next to your Exhibit 3 --  
13 I am sorry. Your Exhibit 4. Exhibit 4 is entitled,  
14 Estimated Realistic Investments Costs, Mid-Atlantic Sale 44  
15 reserve estimates. Will you please explain what comparisons  
16 you are making on this exhibit?

17 A In this exhibit I am simply adjusting the  
18 finding cost for the sale forty acreage and the pipeline cost  
19 to reflect what I believe to be the realistic finding cost  
20 and pipeline cost for large diameter offshore pipelines to  
21 develop a total estimated investment cost for the sale area.  
22 I then compared that against the Interior Department  
23 estimate, and in the low reserve case the realistic investment  
24 cost exceeded Interior Department estimates between eighty-  
25 eight point eight percent and one hundred and thirty-one  
point nine percent.

Q Will you please explain what the second column is as compared to the third column? The second column is captioned twenty-five point sixty-six cents and the third column is thirty-two point eight six cents.

A Yes sir. The first column represents the total investment cost, assuming that the FPC's nationwide or new natural gas finding cost estimate is reflective of what it will cost to find oil and gas in the sale acreage. Similarly, the second column assumes that the new oil finding cost estimates will obtain and all other variables are held constant.

(Continued on next page.)



Donkin-direct/Like

SS:6pm  
fw  
fgJB

Q What did you arrive at as your total estimated realistic investment costs for finding gas?

A These will range between 1.6 billion dollars and \$1.97 billion.

Q The \$1.6 billion is in the first -- in the second column, correct, next to the item marked "6"?

A That is correct.

Q The \$1.9 billion is in the third column on the same line opposite Item 6; is that correct?

A That is also correct.

Q As contrasted with your total figures, what were the Interior Department's estimates and where do we find them?

A At line 7, in both columns, \$852,000,000, and \$852,000,000--

THE COURT: Million?

THE WITNESS: Billion.

THE COURT: Dollars?

THE WITNESS: Million Dollars, I'm sorry.

A (Continuing) That estimate also appears at page 6 of the PDOD for Sale No. 40.

Q So the Interior Department's estimates of \$852 million are derived from the PDOD for Sale 40?

A Yes.

Q Your estimates are derived from the FPC data

Donkin--direct/Like

you previously identified?

1854

A That is also correct.

Q To what extent did you find the Interior Department had underestimated the investment costs in the low case reserves?

A By an absolute magnitude of \$756,790,000.

Q That is the number and figure that appears opposite Item 8?

A That is correct.

Q What does the figure in the third column, \$1,123,000 plus represent?

A That represents the amount by which Interior underestimated the investment costs for this acreage. The finding costs are 32.86 cents per million btu.

Q The percentage of understatement is the last item in each column; is that correct, opposite Item 9?

A I wouldn't call it percentage of understatement. It's the percentage by which the realistic investment costs exceed the Interior Department's estimate.

Q What are the figures on that, please?

A They range between 88.8 percent and 131.9 percent.

Q If we turn to page 2 of Exhibit 4, am I



1855

Donkin-direct/Like

correct that you have performed the same type of analysis here except that you are addressing yourself here to the high case reserves estimate; is that correct?

A That is also correct.

Q Just to move it along, you found that the Interior Department had underestimated the investment costs in the amount of -- by the amount of \$2,359,773,000 in column 2 and \$3,668,703 in column 3; is that right?

A That is correct.

Q The percentage by which the realistic investment costs exceed the Interior Department's estimate is contained at the foot of both columns; is that correct?

A Yes, sir.

Q And the respective figures are 70.7 percent and 100.9 percent?

A Yes.

Q Turn now to your Exhibit 5. What does this exhibit portray, please, and what was the purpose of its preparation and the exhibit, for the record, is entitled "Annual Natural Gas Production as a Percent of Proved Reserves for Future Offshore Gas Reserves Additions."

There's been quite a bit of discussion already here today as to the production rates from offshore oil and gas reserves. This morning it related primarily to oil.

1  
2 However, it's also the case that natural gas reserves  
3 cannot sustain their peak production level for much more  
4 than a year or two; in particular from the offshore areas.  
5 The decline is relatively rapid.

6 I prepared this exhibit in conjunction with  
7 a later exhibit of mine which was prepared as a result of  
8 my observation that the Interior Department's peak natural  
9 gas production level really could never be obtained given  
10 the reserves estimated that they were assuming.

11 To illustrate, in the 9.4 trillion cubic  
12 feet case, the Interior Department assumes that natural  
13 gas production will peak in 1989 at a level of 3,080,000  
14 mcf per day. This is approximately 1.124 trillion cubic  
15 feet per year, which is nearly 12 percent of the total  
16 reserves, natural gas reserves, assumed for the entire  
17 range area.

18 The reason that this is virtually impossible  
19 to obtain is that in 1981 natural gas production commenced  
20 increases rather substantially in 1983, more substantially  
21 in 1985, and the reserves that were brought on the stream  
22 relative to that production, by the time you reach 1989  
23 have already commenced a substantial production decline.

24 Therefore, to prepare Exhibit No. 6 and  
25 Exhibit No. 5, I assumed realistic production decline levels



1  
2 for non-associative gas, for oil production and for asso-  
3 ciated gas production.

4 Given those assumptions, I then prepared  
5 Exhibit No. 6.

6 Q Before you discuss Exhibit No. 6, let's first  
7 begin with Exhibit No. 5, page 1.

8 Your first column is entitled "Full year of  
9 production." and the second column is entitled "Production  
10 as a percent of reserves."

11 Is it the purpose of this exhibit to show that  
12 oil and gas reserves cannot sustain production at a con-  
13 stant rate over a time?

14 A Yes, sir.

15 Q At what point do new oil and gas fields at-  
16 tain their maximum production levels?

17 A Given the estimates prepared by Exxon,  
18 I believe in 1973, it would appear that they obtain their  
19 peak production level in the first full year of production  
20 after they are brought on stream.

21 Q What happens later in their life?

22 A Annual production as a percent of original  
23 reserves declines.

24 Q So that whereas in the first full year of  
25 production you had a 10 percent figure, in the fifteenth

Donkin-direct/Like

1853

year you show a 2.4 figure; is that correct?

A That is correct.

Q Will you turn now to page 2 of two, which is entitled "Annual Crude Oil Reduction as a percent of reserves Added and Associated Gas Production for a Barrel of Crude Oil Production or Crude Oil Reserves Discovered in 1974"

Will you first define what you mean by associated gas production?

A That is the gas that is found and produced in association with oil. It is either solution gas or gas cap gas.

Q You show the associated gas production data in the fourth column; is that right?

A Fourth and Fifth columns, yes.

Q The non-associated gas figures are shown in the second column; is that right?

A There are no non-associated--

Q I'm sorry, the second column is oil production. Will you please explain what the purpose of this particular exhibit was and what it shows.

A The purpose of this exhibit was to enable me to develop a production decline schedule for both oil and associated gas in Exhibit No. 6.



1  
2 Q If you look at the third column, am I correct  
3 that that column shows that oil production obtains its maxi-  
4 mum during the early years, namely, by 1980 oil production  
5 as a percentage of reserves will reach the factor 6.36;  
6 is that right?

7 A That's correct.

8 Q And then it begins to decline; is that right,  
9 with the year 1981 and goes down steadily until it reaches  
10 the figure 1.62 in 1993?

11 A That's correct, yes.

12 Q What does the second column show, the one  
13 entitled "Barrels"?

14 A (No response)

15 Q That shows the decline of production over  
16 the life of the field; is that right?

17 A Yes, that's the annual production.

18 Q Now, the fourth column shows that associated  
19 gas production also attains its maximum production in the  
20 early years up through 1981 and then declines steadily  
21 until it reaches a lower level of 27,241 by the year 1993;  
22 is that right?

23 A Yes, sir.

24 Q You've expressed in the final column the  
25 factors which remain constant during that period; is that

Donkin-direct/Like

1860

1  
2 right?

3 A Yes, the last column is the amount of  
4 associated gas production per barrel of oil.

5 Q That remains level?

6 A Yes, sir.

7 Q So whereas the oil goes down, the associated  
8 gas production remains level; is that correct?

9 A Yes.

10 Q Your data source for this information--

11 THE COURT: No, the ratio remains--

12 THE WITNESS: Yes, the quantity of gas per  
13 barrel remains constant.

14 Q Your data source is indicated at the foot  
15 of the page?

16 A Yes, sir.

17 Q Will you please turn to Exhibit 6. Is  
18 this exhibit intended to demonstrate the Secretary over-  
19 stated the peak daily production schedule?

20 A Yes, it is.

21 Q What did the PDOD Sale 40 assume would be  
22 the situation in that regard?

23 A The PDOD assumed that if oil reserves are  
24 400 million barrels, oil production will peak in 1939 at  
25 a level of 90,000 barrels per day.



1861

Donkin-direct/Like

This exhibit shows that to obtain that production level in 1989 and, incidentally, in each of the years between 1981 and 1989, oil reserves from this acreage must have been 489,707,000 barrels as opposed to the Interior Department's estimate of 400 million barrels.

Q If you assume the reserve estimate of 400 million, which was adopted by the Secretary, is it possible that the Secretary's production schedule can be attained?

A No, I don't believe that it is, and in fact an approximation of the peak oil production that could be obtained would be approximately 75,000 barrels per day in 1983.

Q What would the reserves have to be in order to realize the production schedule that was projected by the Secretary?

A 489,707,000 barrels.

Q As compared to his estimate of 400 million, is that right?

A That's correct.

Q Will you please turn next to page 2 of Exhibit 6. This is entitled "Associated and non-associated gas reserves acquired if OCS Sale 40 acreage is to produce at the levels contained in the Interior Department's Program Decision Option Document, Low Reserves Case."

Will you briefly compare this exhibit with

Donkin-direct/Like

the one that you just described on page 1.

A Yes, sir. Similarly, again, the reserves required would be even more significantly greater to obtain the Interior Department's peak daily natural gas production estimate.

Typically, 3.965 trillion cubic feet of natural gas would be required--

Q That is the figure in the lower right-hand corner?

A Yes, sir.

Q Continue, please.

A That--

Q Tell us first what the Secretary's reserve estimate was.

A The Secretary's reserve estimate in his low resource case was 2.6 trillion cubic feet.

Q Is it possible with a reserve estimate of that amount to attain a peak natural gas production of 850,000 cubic feet -- 850,000 --

A I do not believe it's possible if production commences in 1981 and increases at the levels forecasted by the Interior Department in the PDOD.

Q How much would the reserve have to be in order to realize the Secretary's estimate in the low gas



1862A

Donkin-direct/Like

reserves case?

A 3.965 trillion cubic feet.

Q That figure is what percentage greater than the Secretary's estimate of 2.6 trillion cubic feet which is contained in the PDOD?

A 52.5 percent greater.

Q So there would have to be reserves of 52.5 percent greater in order to realize the Secretary's estimate of production?

A Yes.

Q Would you now turn to page 3 of Exhibit 6, and is this a similar analysis except that this takes care of the high reserve case; is that right, whereas the previous exhibit concerned itself with the low reserve case?

A Yes.

Q What were your findings as to accuracy of the Secretary's estimates of peak oil production?

A Again, the total reserves, total oil reserves would have to be greater to obtain the peak oil daily production levels assumed by the Interior Department.

Q What did the Secretary estimate as being the peak oil production daily?

A 320,000 barrels per day in 1989.

Donkin-direct/Like

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q What did he estimate in the high reserve  
ase as being the reserve of oil?

A 1.4 billion barrels.

Q At a reserve figure of 1.4 billion barrels,  
could the Secretary reach-- Withdrawn.

Could the field reach a production of 320,000  
barrels daily?

A No. In fact, given the deliverability decline  
which I assumed in preparing these exhibits, peak production  
would be obtained in 1988 at approximately 260,000 barrels  
per day. This is 60,000 barrels per day less than the  
Interior Department's estimate.

Q To what extent did the Secretary overstate  
the peak daily production, in your opinion?

A By approximately 25 percent in terms of re-  
serves; however, in terms of peak daily production, by  
approximately 23 percent.

Q Turn, please, to page 4 of Exhibit 6.

Explain, please, the analysis that is contained  
on this page.

A This is very similar to the three previous  
pages. In this case the Interior Department assumed  
that 9.4 trillion cubic feet of reserves--

Q You're talking about gas now?

BEST COPY AVAILABLE



Donkin-direct/Like

1862C

2 A Yes, of gas reserves would be located at the  
3 Sale 40 acreage.

4 Given that reserve estimate, they assumed  
5 that in 1989 3,080,000 mcf per day would be produced  
6 and that this would represent the peak daily production.

7 This exhibit shows that in order for that  
8 estimate to obtain, natural gas reserved would have to  
9 be 14.248 trillion cubic feet as opposed to the Interior  
10 Department's estimate of 9.4 trillion cubic feet.

11 This 14.248 trillion cubic feet figure is  
12 approximately 51 percent greater than the Interior Depart-  
13 ment's estimate.

14 Q We move on now to Exhibit 7.

15 Is this a new subject, Mr. Donkin?

16 A It's related to what I've just previously  
17 discussed.

18 Q Let me put the question this way: Did you  
19 find any additional evidence that the Secretary had over-  
20 stated the potential benefits associated with Sale 40  
21 acreage?

22 A Yes, sir, I did.

23 Q Did that additional evidence, in your  
24 opinion, confirm your own analyses?

25 A Yes, it did.

Donkin-direct/Like

MR. BRUCE: Your Honor, if this is in reference to Exhibit 7, I believe, which is an abstract from a magazine article dated December 20, 1976, and under the imprimatur of Mr. Like, I insist it be taken out. We object to the document and the testimony on the document.

MR. LIKE: This document is of a somewhat different character from those you ruled on before.

If I may explain: this reports on a study that was performed by the Arthur D. Little Company for the Department of Interior, Bureau of Land Management. The study is offered to show that the Arthur D. Little Company, the agent of the BLM, came to the conclusion that oil and gas production for the entire Atlantic OCS area will peak in 1985 and I'm offering this as an admission against interest.

The document prepared by the BLM's contractual agent contradicts the statements of the Interior Department in its decision documents; consequently, I don't think it's the type of statement that your Honor would preclude as a cut-off date. It's part of an on-going survey by the Interior Department using the Arthur D. Little Company as a

BEST COPY AVAILABLE



1862 E

14

1084

Donkin-direct/Like

2 consultant to verify resources.

3 The information is important to the industry.  
4 If everybody is laboring under the misapprehension  
5 as to the true size of the oil and gas resources,  
6 that information ought to be brought out as quickly  
7 as possible. This is a study done for the Interior  
8 Department, being offered in that context.

9 MR. BRUCE: Your Honor, as an examination  
10 of the article shows, that's a topical report.  
11 That magazine as Mr. Like will concede, the witness  
12 will confirm, comes out every week, doubtless that  
13 report was issued a week or maybe two weeks before  
14 the December 20th date of the magazine article.

15 It's a report of a news event, quite clear in  
16 that context the report from that consultant firm  
17 is not available at any time to the relevant frame  
18 of reference.

19 THE COURT: I'm going to pull it off the  
20 T-250. It's coming into evidence.

21 MR. LIKE: May I ask that it be considered  
22 as an offer of proof and as part of the offer of proof  
23 I ask you permit Mr. Donkin to explain the Exhibit  
24 No. 8, which is the following page, which is the  
25 comparison--

Donkin-direct/Like

1862F

1  
2 THE COURT: Based on this article?

3 MR. LIKE: Yes.

4 MR. BRUCE: We have a similar objection.

5 The exhibit is abstracted entirely from the article.

6 THE COURT: I don't want it.

7 What else do you have?

8 MR. LIKE: I want to make sure I have an  
9 offer of proof expressed intelligently in the record.  
10 Otherwise looking at the two documents will not,  
11 I think, be completely comprehensible.

12 Q The document, Exhibit--

13 MR. HYMAN: Before he continues, there's  
14 another objection.

15 THE COURT: I've sustained the objection.

16 MR. HYMAN: I understand. He's offering it  
17 on the grounds that this company is an agent of the  
18 Government.

19 THE COURT: Excuse me. I sustained the  
20 objection to it.

21 MR. LIKE: The offer of proof, your Honor,  
22 if I may, is as follows:

23 The article and the analysis which is contained  
24 on Exhibit 8 shows that the Secretary's estimate of  
25 peak oil production, which is under 20,000 barrels per

1863



1862 G- 16

1086

Donkin-direct/Like

day and which is assumed to occur in 1989 under the high reserves case is nearly as great as the Arthur D. Little peak oil production estimate for the entire Atlantic OCS, if you look at the first column--

MR. BRUCE: Your Honor--

MR. LIKE: This is part of the offer of proof.

THE COURT: I don't want it. I have the document itself. The document itself and all related documents after it, which I think--

MR. LIKE: Only one related document.

There are only two documents, two articles, your Honor, that relate to this offer of proof. One--

THE COURT: I'm pulling off those pages.

Mark them as T-250-1 for identification. That will be your offer of proof. I'm not taking it.

THE CLERK: Document marked Plaintiff's Exhibit T-250-1 for identification.

(So marked)

THE COURT: I think all the rest of it is prior to the environmental statement; is that right?

MR. BRUCE: No, the next--

THE COURT: The next is out, too.

MR. BRUCE: November 22, 1976.

Donkin-direct/Like

THE COURT: That was pulled.

MR. LIKE: That's part of the same offer of proof.

THE COURT: Everything else will be in as T-250 in evidence.

THE CLERK: So marked.

(So marked)

MR. BRUCE: Again, there's another part of this exhibit— I'm sorry, this is the one you pulled, October 18th.

MR. LIKE: Might I continue?

THE COURT: Please.

Q Mr. Donkin, did you find any confirmation of your analyses in any circular issued by the United States Geographical Survey?

A Yes, sir.

THE WITNESS: Might we go off the record for one second?

THE COURT: Yes.

(Discussion off the record.)

(Continued on next page)

HS fol<sup>23</sup>

24

25



1862 I

1088

7/1 1

Donkin - direct - Like

2 THE COURT: Your next article is May of 1975.

3 That is the Hefferman article.

4 MR. LIKE: Before we go on to that next article.

5 I have a question pending before Mr. Donkin regarding  
6 evidence that he found in a U.S. Geological circular,  
7 which tends to confirm his analysis of the overstate-  
8 ment by the Secretary of the production and reserve  
9 positions in the mid-Atlantic sale 40 area.

10 THE COURT: The date?

11 Q The date?

12 A Dated 1975.

13 THE COURT: All right.

14 Q And the number of that?

15 A It is the circular numbered 725, but without  
16 this article, it contains the U.S.G.S. table, which I am  
17 sure was available to the secretary prior to May of 1976,  
18 it is difficult to sustain the argument.

19 Q Are you saying that there is a table that  
20 is published within the exhibit that his Honor has marked  
21 which was known to the secretary before May of 1976?

22 A I would be surprised that it was not known  
23 to either the secretary or the staff.

24 THE COURT: I do not want to haggle. Just  
25 give us a general statement. that based upon the then

Donkin - direct - Like

available information, --

Q Do you understand his Honor's question?

Based upon the information, in your opinion, that was available to the secretary before May of 1976, and information from the United States Geological survey, a unit of the department of Interior, what should the secretary have known regarding the reserve positions?

A That --

MR. BRUCE: I'll object. He's trying to get in to the back door what he cannot get in through the front door. Can I have the witness on voir dire for a moment?

THE COURT: No, you may not. Overruled.

A This document -- This geological survey circular number 725, contains probability distributions for each of the off shore areas. Specifically it relates to probabilities associated with various levels of reserves being located at those areas. For the entire Atlantic coastal states off shore area, the probability that 9.4 trillion cubic feet of reserves will be discovered is .43.

It other words, it is less than a fifty percent chance that the entire area from the Georgias bank area down to off shore Florida, would contain the high natural gas reserves estimate used by the interior department in the PDOD for sale



18621K

1090

Donkin - direct - Like

3

1

2

40.

3

4

5

6

With respect to oil, a similar probability table is presented. This table shows that for the entire Atlantic off shore area, the probability that 1.4 billion barrels will be found is .77.

7

8

MR. LIKE: Judge, the document which has been deemed to be an offer of proof contained --

9

10

THE COURT: I am not interested. Can't you move ahead?

11

12

13

14

15

Q Would you now please turn to the exhibit which you have that is entitled "Deep Onshore drilling prospects for the 48 states, Robert G. Hafferman, dated May of 1975."

16

17

18

19

20

21

22

23

24

25

Will you tell us the reason for offering the exhibit and the highlights of the exhibit?

A This exhibit is one -- this article is one of several in this exhibit which relates to the question of alternatives to leasing and producing the sale 40 acreage. These articles are reflective of the onshore potential which I believe -- and numerous others familiar with onshore oil and gas -- the onshore oil and gas potential is believed to be a substantial resource which is an alternative to the sale 40 acreage, and that this alternative was not adequately assessed by the secretary or the interior department in the final environmental impact statement.

Donkin - direct - Like

Q Was it adequately evaluated in the PDOD for sale 40 in your opinion?

A No, there wasn't very much mention of the onshore natural gas and oil capabilities.

Q What is the evidence with respect to that onshore potential?

A Well, let us go through this exhibit. The first item is an article that was prepared by Robert Heffernan the third. Mr. Heffernan is an independent oil and gas producer. He operates out of the Anadarko area of the Texas panhandle and Western Oklahoma. According to Mr. Heffernan, and this article is dated May of 1975, supply and demand from natural gas could be brought into balance between now and the early 80's largely by the development of deep onshore gas.

Specifically, Mr. Heffernan refers to an estimate by the potential gas committee that the onshore areas of the United States contain approximately 550 trillion cubic feet of potential gas supplies, undiscovered, and that the range for the Deep andarko basin alone is between 50 trillion cubic feet and 145 trillion cubic feet.

Q Who was the potential gas committee?

A That is an industry organization that is made up of academics, oil and gas producing company representatives,



1862 M

1092

5

Donkin - direct - Like

natural gas pipeline company representatives and gas distributors.

Q Is the information which was put out by the potential gas committee generally available in open literature and was it available to the secretary before May of 1976?

A Yes, sir.

Q Will you contrast, please, the estimate of 550 trillion cubic feet by you associated with the Anadarko Deep basin, with the secretary's estimated gas reserves for the sale 40 area?

A The contrast I think is appropriate for the Deep Andarko Basin is the estimate of 50 trillion cubic feet to a hundred and 40 trillion cubic feet. Obviously, these are substantially in excess of the Interior Department's reserve estimate of 9.4 trillion cubic feet.

Q Will you continue please with other evidence --

A Yes.

Q -- of the onshore potential?

THE COURT: I do not want to go through all of this. I take it your testimony is that new fields and potential fields will provide substantial oil and gas?

THE WITNESS: Yes.

THE COURT: Onshore?

1862M

Donkin - direct - Like

THE WITNESS: Yes.

THE COURT: With less possibility of harm on  
the environment?

THE WITNESS: Yes.

MR. LIKE: May I just conclude with some bottom  
line questioning?

THE COURT: Yes.

Q In your opinion and based upon your knowledge  
and experience, did the secretary adequately evaluate the  
alternatives of onshore gas reserves?

A No sir, in fact the secretary's final environmental  
impact statement for sale 40, does not even consider as an  
alternative the onshore capabilities in the event that natural  
gas is -- natural gas prices are deregulated or alternatively  
that natural gas prices under a continued regulation are  
increased substantially. Specifically with respect to oil,  
there was some discussion of the onshore potential from  
secondary and tertiary recovery, but the impact statement  
concluded that this was in all likelihood not be that great,  
because most of that oil would be classified as old oil and  
hence subject to continued old oil price controls, with  
absolutely no discussion of the potential from secondary and  
tertiary recovery in the event that that type of production  
were to be decontrolled, which is obviously a policy option



186-20

7

Donkin - direct - Like

1094

1

2

and a very likely option with respect to the future.

3

4

5

Q What was your opinion based upon, your research and your experience and your knowledge as to the secretary's cost benefit analysis?

6

7

8

9

A It's a general statement in my opinion. It was not sufficiently inclusive. It did not have addressed a number of alternatives. It was erroneous, as I show in my exhibits, and therefore inadequate.

10

11

12

13

14

15

16

Q From the standpoint of a prudent administrator and decision maker, with the information that was available to the secretary, did he adequately evaluate the alternatives of investing the sums of money that would otherwise be paid for sale 40 acreage and later expended for exploration and production, and developing instead the existing onshore oil and gas reserves?

17

18

19

20

21

A No, he did not.

Q What are the benefits of the alternatives which he did not pursue, namely what would have been the benefits of investing those sums of money in the alternatives of further exploration and development of the onshore reserves?

22

23

24

25

A With respect to onshore reserves they are in large part to be found in and around currently producing fields. Many of the natural gas pipelines in particular and some oil pipelines now connected to those fields are operating

1862P

1095

Donkin - direct - Like

8 1  
2 at substantially below their rated capacity. Simply they  
3 would be able to obtain quite quickly any new supplies  
4 developed in those areas. Therefore, not only is the  
5 resource based onshore greater and of a greater potential  
6 than the sale 40 acreage, they can also be brought on to  
7 production faster and with lower investment costs. No  
8 new pipelines would be required in most instances, gas  
9 processing plants are already located in those fields, and  
10 there would be no necessity --

11 Q Which alternatives would be preferable from  
12 the standpoint of the consumer of natural gas, the alternative  
13 of the OCS 40 or the onshore -- the alternative of  
14 developing the potential onshore reserves that you have  
15 identified and why?

16 A Well, to my view the onshore alternatives would  
17 be far preferable and in the public interest, because it  
18 would reduce the rates, for example, in the case of natural  
19 gas that they would ultimately be charged. As I indicated no  
20 new pipelines would be required, as is the case in the sale  
21 40 situation. In addition any additional through puts in  
22 existing facilities will reduce the cost of service on a  
23 unit basis and ultimately the consumer would be better off.

24 Q Would the cost of moving the gas from Texas  
25 or the other areas that you have identified, represent any

BEST COPY AVAILABLE



1862 Q

1096

Donkin - direct - Like

substantial economic penalty to the consumer as compared to developing the CCS 40 area?

A To the extent that the pipelines connected to those producing regions are currently operating at levels below their capacity, which most of them are, there would not be a substantial increase in their cost of service.

IN fact, there may be a decline. However, in the instance of the sale 40 acreage, new pipeline facilities would be required at current cost of money as opposed to the embedded cost of money in the old pipeline facility.

New pipeline construction costs are far greater than they have ever been in the past and since the utility companies, the gas pipe line companies, and even the distributor that may get involved in off shore gas pipe lines are able to pass all of their higher costs or pipeline construction costs on to the ultimate consumer. That would be quite a burden to pay as I perceive the far lower costs operations.

(Continued)

Donkin - Cross/Kaufman

MR. LIKE: Thank you, that completes the record.

THE COURT: You have no direct?

MR. KAUFMAN: I have just one or two questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. KAUFMAN:

Q You stated before, right at the beginning of your testimony as I understood it, that the cost of pipelines have substantially been understated?

A Yes.

Q Are you able to state what the consequence of the understating of the costs of these pipelines is?

A Well, one consequence is that the ultimate cost would be greater to the consumer than anticipated, when the Secretary made his decision.

Q Basically, what I would like you to discuss, is how it relates to the question of tankers and pipelines.

A I understand the purport of the question. The problem that I have with the question, Mr. Kaufman, is that my comparison is against the Interior Department's. While it is true that offshore pipeline construction costs have increased substantially, the Interior Department's number was simply an estimate at the outset. It is probably the case, however,



1862 S

1098

Donkin - Cross/Kaufman

that since offshore pipeline construction costs have approxi-  
mately doubled since 1973, that those costs at least currently  
are increasing at a far more rapid rate than overall inflation  
forces in the economy in general, and to that extent I would  
anticipate that future offshore pipeline construction costs  
may or are likely to raise at a faster level than tanker rate  
increases.

(Continued next page.)

llows

1863

2

1

Donkin-cross-Jensen

1105

2

3

Q Are there other pipelines of this size being built in similar water depths at this same period of time?

4

5

6

A I'm certain there are. I did not look at other pipelines. I was where these data were readily available and --

7

8

Q By data, you mean the data from this one particular pipeline that you examined?

9

10

11

A That's correct.

Q Are you familiar, for example, I'm reading now from the Oil and Gas Journal, August 18, 1973.

12

13

14

"With a pipeline that's described as the Vermillion and East Cameron pipeline in Louisiana, 30 inch pipeline was installed in 1973."

15

16

17

A No, I'm not familiar with that.

Q Would it surprise you if I told you the cost per mile for that pipeline was \$485,000?

18

19

20

21

A No. I'll explain why that doesn't surprise me. There's an article entitled "Off-Shore Pipeline Costs Skyrocket," appears in the Pipeline and Gas Journal of October, 1976. This article compares --

22

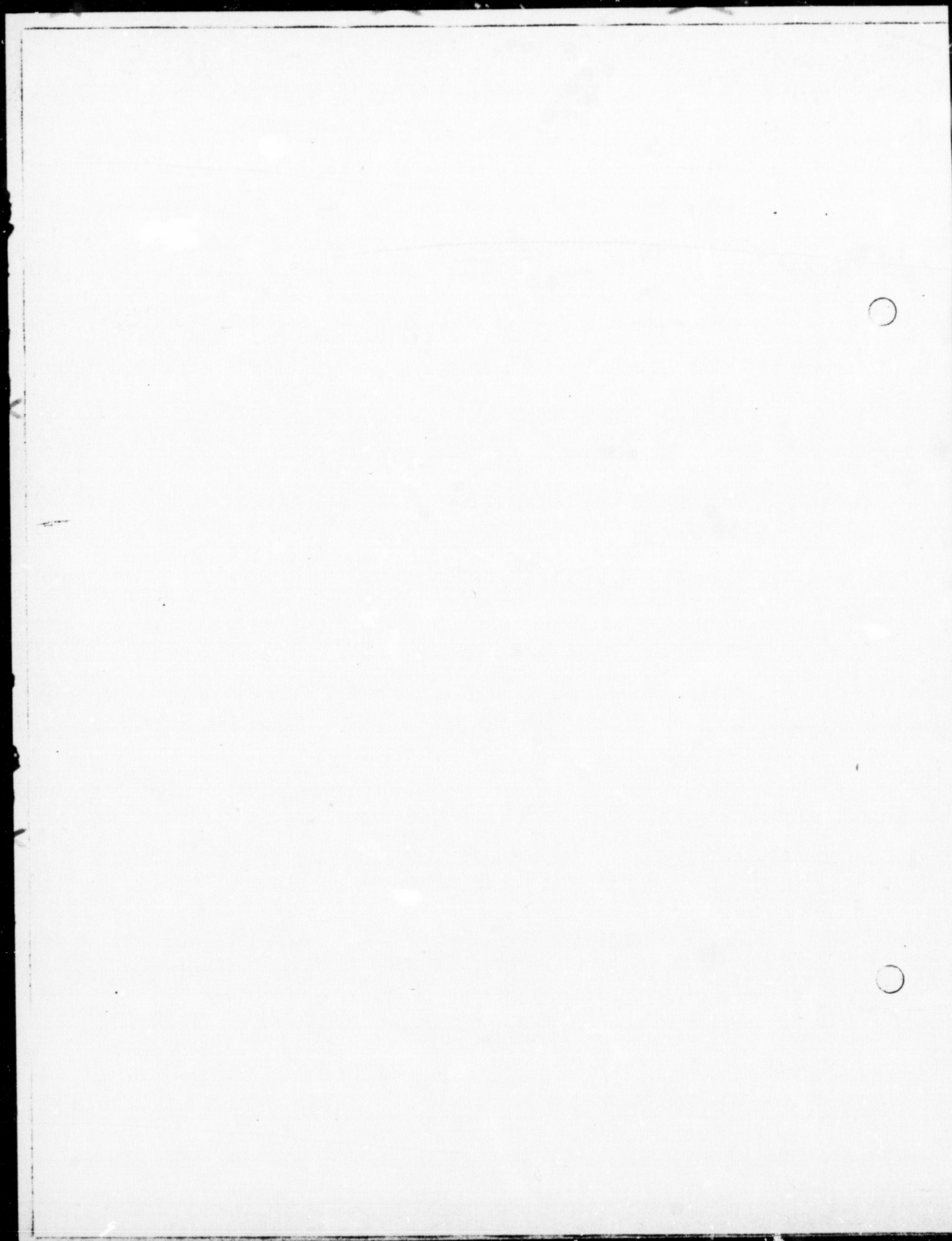
23

24

25

MR. JENSEN: Your Honor, this testimony relates to cost skyrocketing well after the period of time the EIS was issued. This is not information that would be available to the secretary.





Donkin-cross-Jensen

110'  
6

THE COURT: I'll permit him to answer. You asked the question.

A This article compares current offshore pipeline costs to offshore Gulf of Mexico pipeline costs in 1973, also, and it states, "In that short period," the period being the 1973 through 1976 period, "The indicated increase in the cost of offshore pipeline construction has been almost 150 percent." It also compares the high island offshore system costs, which appear in my testimony and which were submitted in late 1975, "To the estimate cost of the 72 mil 36 inch mag line of the stingray pipeline system which results also in offshore Louisiana, and the stingray system costs were \$556,652 per mile. The number that you indicated with respect to 1973 pipeline costs seems fairly accurate.

Q Do you know the date that was used for the pipeline estimates contained in the Sale 40 EIS?

A Virtually all of the investment cost estimates, I believe, were indicated to represent 1976 dollars. I would be surprised that they would have some estimates in 1976 dollars and others in earlier dollars.

Q Would it surprise you if the estimates for the costs in EIS were 1974 dollars?

A I'm referring to the program at particular PDOS.



1865

2

Q I'm not asking you about that --

3

A I'm sorry, to the Sale 40 PDOD.

4

Q It's your testimony in 1976 dollars are for

5

those costs?

6

A I'm assuming that they were in 1976, though.

7

Q Do you know whether they were 1976 or 1974

8

dollars?

9

THE COURT: What do they say?

10

MR. JENSEN: I believe 1974 dollars.

11

THE COURT: Is that what they say?

12

MR. JENSEN: Yes.

13

THE COURT: Let's see what they say. He's

14

~~—~~ talking about the PDOD. The PDOD say 1974 dollars?

15

If not, I'll assume it's '76.

16

MR. JENSEN: We'll look it up, your Honor.

17

Q Mr. Donkin, do you recall what the Sale 40

18

EIS says, whether or not they're 1976 or 1974 dollars?

19

A No, because my comparison was relative to the

20

Sale 40 PDOD.

21

Q Did you read the Sale 40 EIS under the dis-

22

cussion of pipelines?

23

A I only read the EIS pertaining to alternatives.

24

Q All of your testimony of pipeline costs relates

25

entirely to the PDOD, does not refer to the Sale 40 EIS?

1 A That's right.

2 Q You're not familiar with any of the analyses  
3 in the Sale 40 EIS about the cost of pipelines?  
4

5 A No, sir.

6 Q What part of the Sale 40 EIS did you read?

7 MR. LIKE: He's testified -- objection, your  
8 Honor. He testified a moment ago he read only the  
9 alternative section. This is repetitive. Again, we  
10 have a lot --

11 MR. JENSEN: I didn't hear him say that.

12 THE COURT: You may inquire.

13 Q Is that the only section you read, the alterna-  
14 tive section of the Sale 40 EIS?

15 A Yes.

16 Q All the rest of your testimony about pipelines,  
17 everything else, is with respect to the PDOD only?

18 A Yes.

19 Q Mr. Donkin, I want to question you about  
20 Exhibit 5 in this package of exhibits that were submitted to  
21 the Court. Specifically, page 1 of that exhibit, this page,  
22 I take it, contains the curve that you used in analyzing the  
23 production rates for Sale 40, the potential production rate  
24 for that sale.

25 A For the nonassociated gas portion of the gas



2  
1  
2 virtually impossible.

3 Q This is all using that same assumption that  
4 peak production is going to be achieved around 1989 or  
5 1990?

6 A It's your assumption, not mine. I'm testing  
7 its validity.

8 Q In your testimony about the alternatives,  
9 you examined an alternative section, I take it, of sale  
10 40 EIS?

11 A Yes.

12 Q And drawing your conclusions, is that correct?

13 A Yes.

14 Q When did you first read this section?

15 A Yesterday.

16 Q I believe you testified, based upon this  
17 article by Mr. Heffner, is it, that there was approximately  
18 550 trillion cubic feet of gas, domestically available on-  
19 shore in the United States, is that correct?

20 A I refer to Mr. Heffner's paper wherein he  
21 refers to the potential gas committees estimate of the  
22 undiscovered natural gas reserves in the onshore lower  
23 48 states area.

24 Q Was one of the purposes of Mr. Heffner's paper  
25 to make a case for deregulation or for price increases

1  
2 for natural gas?

3 Q I don't know what the purpose of his paper  
4 was. I know Mr. Heffner and I know he is an active  
5 supporter of the regulation of new gas prices.

6 Q Would it be fair to say this figure of \$50  
7 trillion cubic feet depends upon either complete deregulation  
8 of natural gas or at least some substantial price increases  
9 under current regulations?

10 A I think one of the underlying assumptions, I  
11 believe he stated explicitly that the price of natural  
12 gas must increase substantially above the regulated price  
13 at that point in time.

14 Q If it does then this figure -- this reserve  
15 figure would not be a fair or accurate figure?

16 A No, I would not agree with that at all. The  
17 gas is there. It becomes a question of what price is  
18 necessary to stimulate the exploration and development for  
19 that gas and that opens up an entire new area of discussion  
20 dealing with the market structure, competition in the  
21 industry, policy and alternatives, things of that nature.

22 Q Do you know if the Secretary of the Interior  
23 has any authority as far as deregulating the natural gas  
24 is concerned?

25 A I'm not aware that he has such authority, but



1  
2 I would think that it would be an area that would be  
3 discussed at length in any document dealing with alternatives  
4 to OCS leasing. I would imagine that deregulation or  
5 increases in gas prices would be a very important topic.

6 Q You say you're familiar with the discussion  
7 of Sale 40 EIS about alternatives. Do you recall a section  
8 that appears at the beginning of Page 537 of Volume 2 of  
9 the 40 EIS?

10 MR. LIKE: Could we give Mr. Donkin the  
11 volume, please?

12 MR. JENSEN: Certainly.

13 A What is the page, sir?

14 Q Beginning at Page 537, Volume 2.

15 A What is the section that you are referring  
16 to?

17 Q At that page and the following pages, is  
18 there a discussion there of possible existing domestic  
19 resources of oil and gas?

20 A Yes, there is a discussion and the point that  
21 I would like to make is, for example, it appears here that  
22 "additional domestic oil reserves are recoverable through  
23 secondary and tertiary extraction techniques, however the  
24 additional oil that is attainable in this manner is in  
25 many cases old, and hence, subject to price controls.

5 1  
2 These controls have diminished the incentive for using the  
3 sophisticated and expensive recovery method."

4 What I would suggest is that an in-depth study  
5 first relative to how many additional oil through secondary  
6 and tertiary extraction techniques would be forthcoming  
7 under the price controls, and secondly, under the situation  
8 where the price controls are removed.

9 I did not see any evidence of such a study.

10 Q As an expert in this field, I take it, your  
11 opinion would be that such an in-depth study would be  
12 required in this section in order to give the reader an  
13 understanding of the possible and second tertiary  
14 recovery?

15 A As I recall, the last time that I testified  
16 I, in fact, indicated that studies had indicated that very  
17 substantial additional quantities of oil could be brought  
18 forth through secondary and tertiary recovery far in excess  
19 of the estimated production levels contained in the PDOD  
20 for Sale 40.

21 Q Other than the lack of this in-depth study  
22 which you identified, what other criticisms do you have of  
23 this discussion?

24 A The alternatives discussion?

25 Q Yes, this particular discussion that you just



focused on in your previous answer?

A My criticism is simply this; that the administrator making a decision pertaining to offshore leasing should have had both before him and available in a document such as this for scrutiny (indicating) by the public --

THE COURT: By this the environmental impact statement?

THE WITNESS: Yes, sir.

THE COURT: That was held up?

A (Cont'g.) An analysis which compares alternatives to the proposed action. That analyzes, ideally and I definitely believe justifiably should contain in-depth estimates of the onshore oil and gas resource case, the anticipated cost -- not just the finding cost -- but the cost of bringing that oil and gas to market in addition to the environmental impact.

This would enable both the administrator and the public to weigh the alternatives and that does not appear in this document.

(Continued on next page.)

HS:jk  
2pm RL

Donkin-cross/Jensen

1872 1118

1  
2 Q Are you familiar with the publication Energy  
3 Alternatives and Comparative Analysis?

4 THE COURT: Is that one of the documents the  
5 Secretary had?

6 MR. JENSEN: This is one of the documents  
7 referred to in the text.

8 MR. LIKE: It is a document like this  
9 (indicating).

10 THE COURT: Indicating six inches.

11 THE WITNESS: The name rings a bell.

12 Q Have you ever read the study?

13 A No.

14 Q So you have no opinion as to the conclusions in  
15 that study, concerning domestic sources, alternative sources,  
16 correct?

17 A I said I haven't read it.

18 Q Doesn't the sale 40 alternative discussion  
19 in Vol. 2 of the 40 BIS specifically refer you to this  
20 publication Energy Alternatives, page 538 and 539?

21 THE COURT: What does it say? What is the  
22 reference?

23 MR. JENSEN: At page 538, talking about oil and  
24 natural gas systems:

25 "A detailed description of the crude oil and



2

natural gas system, Chapters 3 and 4 --"

3

THE COURT: You are suggesting that that is sufficient compliance with the Act?

5

MR. JENSEN: I think perhaps that it does.

6

THE COURT: Any indication that the Secretary read that?

8

MR. JENSEN: I am not certain that he is required to.

10

THE COURT: What was the document supposed to do? You mean just put note references, go see this and that?

12

MR. JENSEN: It contains a set of clear conclusions. My only point is that the Interior Department's analysis, which this expert feels should be supplied, may in fact be supplied in another place and appropriately in another place, and not part of the text in this statement which is intended for a lay decision-maker.

19

Q Let us examine the conclusion contained therein, the very first sentence at the beginning of page 537 states:

21

"Large quantities of oil and gas still remain in the United States."

22

23

Do you agree with that statement?

24

A Yes, sir.

25

Q The next paragraph:

1  
2 MR. LIKE: Objection. The witness has not been  
3 allowed to complete his answer.

4 A (Continuing) I could probably answer that  
5 question had there been such a projection associating that  
6 projection with the alternative costs. Assuming, for example,  
7 that OCS sale 40 is postponed or the acreage is never put up  
8 for lease, what can we assume from the onshore 48 states, from  
9 the Gulf of Mexico, at various prices, deregulation, continued  
10 regulation, then compare that scenario with the sale 40 acreage  
11 also coming onto production.

12 Q Isn't it true --

13 A It may be the case, for example, that many of  
14 these onshore alternatives are available at substantially  
15 lower costs and can be brought on much sooner and at greater  
16 magnitudes.

17 Q But isn't it possible that all of this kind of  
18 information that you say you need is set out in that report,  
19 which is cited here?

20 A I suppose anything is possible, because I  
21 haven't read the report. But it's not clear to me that that  
22 report is a document that the Secretary based his decision on,  
23 nor is it clear to me that even that document has the type of  
24 analysis that I am referring to and the public, when they  
25 read this document I am not sure what their responsibility is



1 talking about secondary and tertiary techniques. He is  
2 talking about new strikes, as I understood his testimony  
3 late last night. Maybe I was asleep. Is that what  
4 you were talking about primarily?  
5

6 THE WITNESS: Yes, your Honor.

7 THE COURT: Why don't you address yourself to  
8 what he was talking about?

9 MR. JENSEN: I may have misunderstood. I  
10 understood a lot of his testimony was directed towards  
11 the Heffernan testimony, new techniques to oil  
12 drilling --

13 THE COURT: Is that secondary and tertiary  
14 techniques? It's a new strike at a deeper depth, isn't  
15 it?

16 THE WITNESS: Yes.

17 Q Is that a new strike?

18 A Is that a new strike or new discovery, yes.

19 I would like to point out, your Honor, that  
20 in my earlier testimony I did discuss --

21 THE COURT: I remember your testimony. As I  
22 understood it, that wasn't the main force of it.  
23 The main force of his testimony, as I understood it  
24 last night and I have it here, first the accuracy of  
25 the cost estimates were bad because they underestimated

1  
2 the costs.

3 Second, that the production per year on the sale  
4 of 40 was overestimated seriously; and

5 Third, that the onshore reserves -- potential  
6 reserves and potential production from new sources  
7 were seriously underestimated.

8 Is that it?

9 THE WITNESS: Yes, sir.

10 THE COURT: That was the gist of the testimony  
11 as I got it.

12 Now, let's get to that and move ahead with other  
13 witnesses, so we can close the hearing.

14 MR. JENSEN: I have no further questions.

15  
16 (continued next page)  
17  
18  
19  
20  
21  
22  
23  
24  
25



Q You have never viewed the amended application?

A Not to the physical facts, no. But my secondary source is -- I've got quite a bit of data.

Q I am not going to question further on that if you have not viewed the amended application.

You have taken what you have from a secondary source and have you constructed it exactly as it appears in the secondary source?

A No sir.

Q Have you constructed it exactly as it appears in the secondary source?

A No sir.

Q Have you constructed it in a fashion that you felt was appropriate?

A I have a summary.

Q This is a summary?

A This is a summary.

Q All right.

Let me ask you, then, in your summary you have block 264 to block 167, does that indicate that the pipeline is running from shore to a discovery area or from one portion of the discovery area to another portion of the discovery area?

A It's running from one portion of the discovery

1  
2  
3 to another, all in the offshore area.

4 Q Would that be true going all the way down  
5 until we come to the item which says, compressor complex?

6 A Yes sir. This is all offshore cost and mileage  
7 and diameter data. None of the costs associated with this  
8 exhibit relate to the transportation of the gas from --

9 Q From the discovery area to shore?

10 A From block A167 to shore. That apparently  
11 is an additional 42 inch --

12 Q All right.

13 A (Continuing) -- pipeline.

14 Q Would you consider these pipelines, then, to be  
15 gathering pipelines?

16 A I don't think anyone calls that 42 inch trunk  
17 the highest land offshore system.

18 Q Then what is a gathering line?

19 A A gathering line is usually within the field  
20 bringing the gas to the central platform. The FPC, as I  
21 recall, doesn't even have jurisdiction over gatherings. It  
22 has jurisdiction over transportation.

23 Q Well now, three of these go to block 36A. Do  
24 you think those three might be gathering lines?

25 A I think if they were to be defined as gathering,  
the FPC would not be involved.



1879

Q But you don't know?

A Well, that would be a legal conclusion anyway.

But those lines are not gathering lines in the conventional sense.

Q But none of them go to shore?

A The segments?

Q None of them go from the discovery area to shore? That's what --

A Ultimately the pipeline will go to shore.

Q But none of what you have demonstrated here goes to shore; is that correct?

A No. But the gas will be transported through these various segments. It does or will.

Q All right. Do you have the PDOD at your disposal? And if you do, would you please turn to page 6 and advise me whether that is the page from which you took the costs that you assumed were used by the Department of the Interior?

A Yes sir.

Q Is there a caption called Capital Costs?

A Yes.

Q And is there a description of a large diameter offshore pipeline?

A Yes sir.

1879A  
made a substantial discovery out there. Some are talking about it being possibly the Gulf of Mexico's largest oil and gas field. And when they acquired the property, the three leases, they were estimating that a platform would cost \$30 million. That platform today is estimated at \$150 million.

Now, what are the finding costs going to be with that whole new frontier area under some definition? That it's going to be extremely expensive to drill and produce that oil and gas. You just don't -- you really can't say for sure just based on the age of the area.

Q So I will understand your testimony, I take it to be that in your professional experience there is no correlation between the magnitude of finding cost and the age or maturity of the field in which the finds are occurring?

A Well, the first --

Q I am sorry?

A The first well in the field -- if you associate the finding cost with that well and if it's a large reserve -- it could be low; it could be high. I just don't know, sir.

Q Well, you're dealing in your exhibit, I take it, with finding costs not with respect to particular wells, but with respect to -- with respect to trends or average; is that right?

A Yes.



1880

1880

1154

2

Donkin-cross-LaFitte

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

wells at a price of \$3,000,000 apiece; do you see that sir?

A Yes, sir.

Q I believe the range of those facilities for the low case reserves was 60 such wells with a range of 240 wells in the high case reserve.

Is that in your judgment a reasonable figure?

A Which figure is that?

Q I'm sorry, the figure for the cost of drilling the exploratory well?

A The \$3,000,000 per well?

Q Yes.

A If it only refers to the cost of drilling exploratory wells, it's at least as high as any average that I've seen for the Gulf of Mexico. You have to recognize it varies with the water depth.

I'm assuming and I believe justifiably so since there's no other entry here that it also includes geological and geophysical work associated with exploratory drilling, what they like to call them, the P.C. finding cost methodology, other exploration costs and other exploration overhead.

Certainly it wouldn't be fair to estimate the total investments in terms of the cost of drilling and exploratory wells only.

Q On that assumption that would be a reasonable

1881

1881

1155

SS 3

## Donkin-cross-LaFitta

figure that you just gave, \$3,000,000 for the exploratory well?

A Yes.

Q The next entry on that table is the cost of drilling developmental wells at a rate of -- varying numbers of wells in the low and high case reserves.

The rate is \$1,200,000 for development wells. Would you say that's a reasonable figure?

A For drilling and completing a successful well, these water depths, yes. You see they are leaving out something. That's substantial additional costs that are incurred with respect to exploration and development.

Q The next item on the table we see is platforms and equipment, ten of those being required for production of the low case reserves, fifty for the high case and the cost is given at \$20,000,000 per platform and equipment and, of course, under that is the entry, under platforms and equipment is the other entry, purchases, gathering lines, etc.

Would you say that's a reasonable figure for the cost of platform and equipment, again as an average?

A I know little bit more about platform costs than I do about the gathering lines and so forth coming out of the producing platforms. I'm not as certain that this is reasonable. It probably is within a reasonable range.



1881A

1881A

1156

Donkin-cross-LaFitte

1  
2 Q It's within a reasonable range anyway?

3 A Yes, sir.

4 Q What about the entry that's last in that line  
5 of items, service of supportive equipment, under that the  
6 parenthesis, heading of mud, suppliers, logging, wellhead  
7 equipment, cementing, diving service, trucking and rental  
8 to the companies.

9 Under the column of range of facilities given as  
10 miscellaneous, the figure given as \$5.2 million. Does that  
11 strike you as a reasonable figure?

12 A I'm not certain because I really don't know  
13 that much about it.

14 Q You don't know that it's unreasonable?

15 A I don't know that it's unreasonable. It did  
16 occur to me it seems that it should vary with the size of the  
17 reserves and it's difficult to see from this document the  
18 extent to which it does vary.

19 Q Mr. Donkin, the items you have covered on  
20 page 6 of the PDOD are what you have relied on and considered  
21 to be the finding costs estimated by the Department of  
22 Interior in connection with the Sale 40 OCS area?

23 A Yes, sir.

24 Q In fact, the items that I discussed with you  
25 are under the heading, Table 3, which is estimated investment

1881B

5

1881B 1157

Donkin-cross-LaFitte

costs, under the heading Capital costs, are they not?

A Yes.

Q Look on page 7 of the PDOD at the first full paragraph where the statement is made, the next page "Salaries for oil field workers are estimated a total of \$212,000,000, lower source estimate to \$613 to high resource estimates for years 1976 through years 1999?

A Yes, sir.

Q Would those figures be included as finding costs in any way or shouldn't they be?

A Probably not because they should probably go under production expenses. That's not part of the finding cost.

Q Why do you say that, Mr. Donkin?

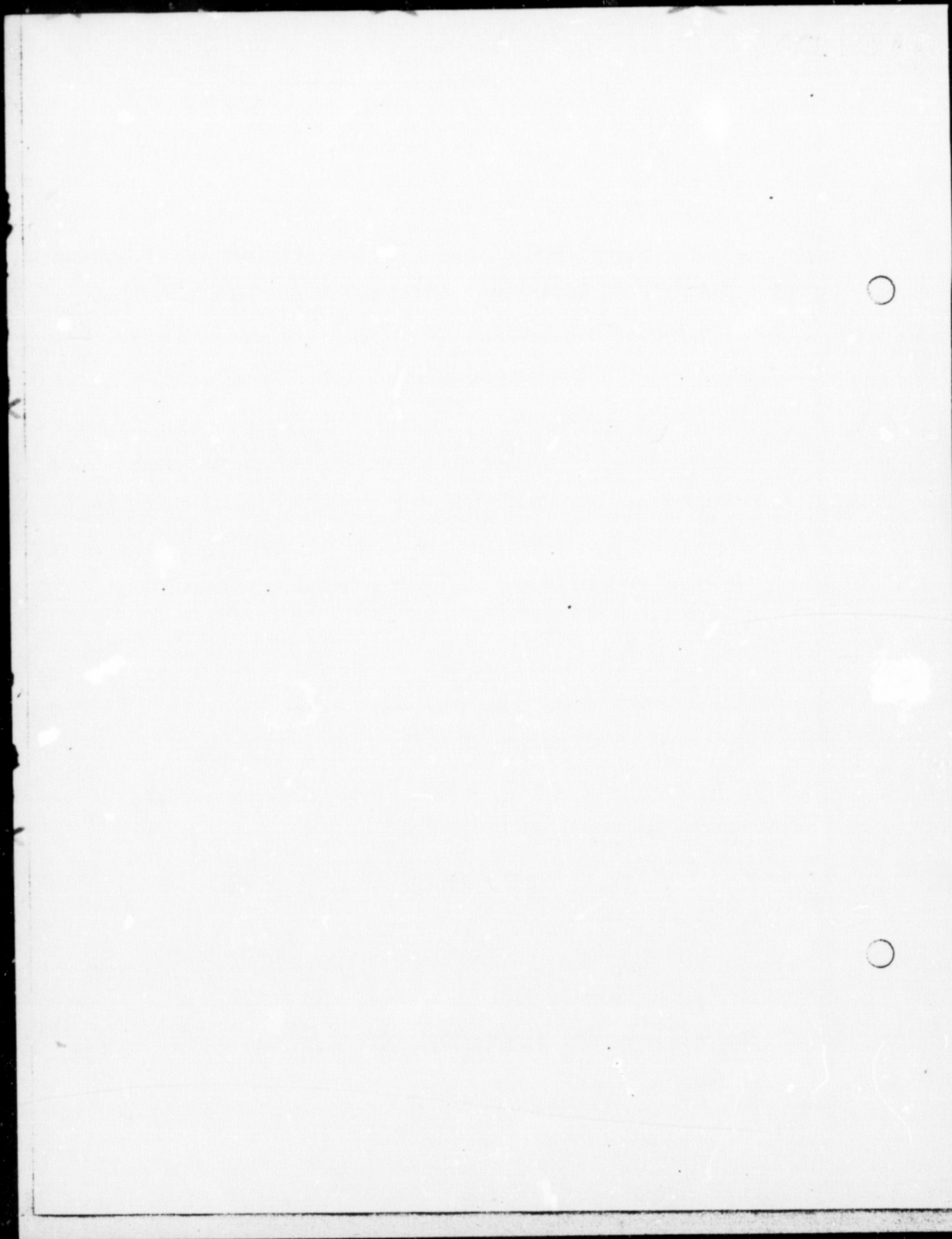
A An oil field worker is different from the individuals who participate in the drilling of the wells.

Q Arent' there oil field workers involved in drilling dry holes as well as producing ones?

A I'm certainly sure that is part of the exploratory wells' drilling costs.

Q When you assume that the salaries of personnel involved in drilling dry holes would also be part of the finding cost involved in the overall plan, the overall project?





1  
2 A A large portion of exploratory wells' cost --  
3 not a large portion, but part of the costs of drilling  
4 relate to the labor associated with that and that is, in all  
5 probability listed here on Table 3 at page 6.

6 At page 7, there is an estimate for salaries for oil  
7 field workers through the year 1999. It seems logical to me  
8 that you are talking about old field workers associated with  
9 producing oil and natural gas. I wouldn't think there  
10 would be very much exploratory well activity taking place  
11 in 1999 in this particular area.

12 Q Let me ask you if it would be your thought,  
13 your opinion, your judgment, that only capital costs are  
14 involved in finding costs?

15 A Capital costs that I'm assuming here relates  
16 to the costs that the oil companies will pay the drilling  
17 contractors to drill and complete exploratory wells and  
18 developmental wells. That's a capital cost.

19 Q Yes, I understand.

20 A That would include the labor associated with  
21 that drilling as distinct from that which appears here on  
22 page 7.

23 Q In your opinion the costs have been estimated  
24 for those items by the Department of Interior as reasonable  
25 cost estimates. I think you already testified to that?



1  
2 A The costs, but perhaps not the range of  
3 facilities. They don't appear reasonable to me. I think  
4 that explains the extent of the understatement.

5 Given these reserve estimates, you are going to need  
6 an awful lot more than 800 producing wells unless the produc-  
7 tivity of drilling in the mid-Atlantic area is higher than  
8 has ever been observed in the Gulf of Mexico, substantially  
9 higher.

10 Q You mean -- I'm sorry withdrawn --

11 You said in your opinion more than 800 wells would  
12 be needed to produce in the higher case reserve situation?

13 A Yes.

14 Q How many more wells?

15 A I would have to make a calculation. Would  
16 you want me to?

17 Q Would you do that?

18 (pause)

19 THE WITNESS: Might we have a brief recess,  
20 very brief?

21 THE COURT: How long will it take you?

22 THE WITNESS: Four minutes.

23 THE COURT: We will take five minutes.

24 (recess taken)  
25

Q Mr. Donkin, I think you were making a calculation in response to a question?

A In the high reserve case, if you convert the oil and gas reserves to MCF, in other words all gas, and you assume that the average depth per well is 9000 feet and if you assume that productivity of drilling be defined as the MCF of gas added per foot drilled as 1530, then this would require 1200 wells to produce the total reserves in the Sale 40 acreage.

If you alternatively assume that --

Q Are you speaking of the low reserve case?

A High reserve case.

Q High reserve case?

A I believe the PLOD assumes 800 wells in that instance.

Q It assumes 800 development wells?

A Yes, but few look at the appendix, that 800 is producing wells. This Table 1 of the appendix, 60 to 240 exploratory wells, 200 to 800 producing wells.

If you increase the average depth per well to 7000 feet and if you increase the productivity of drilling to 1574 MCF per foot, this would require 1500 wells.

You can vary the assumptions but these productivity of drilling figures I used are at least as high, if not higher



than what has been experienced in recent years.

Q In the Gulf of Mexico?

A Yes.

Q Mr. Donkin, is it your testimony -- I thought you testified -- that it was because there was an inaccurate estimate as to the number or range of these facilities, finding costs estimated by the Department of Interior is too low; is that right?

A Given the reserves estimates, the total investment which I then related to finding costs are too low, yes.

Q Is that the reason for the finding costs being too low for purposes of your comparison that you made?

A Yes.

Q Isn't it correct that in comparison that you made you assumed the number of facilities that the Department of Interior assumed in the range of facilities column?

A I made no assumption with my finding cost estimate with respect to the range of facilities. In other words, I did not consider that. I looked at the absolute level for developmental producing wells, platforms, exploratory wells, etc.

Q Let's look at page 1 of your first exhibit?

A Yes, sir?

## Donkin-cross-LaFitte

Q Under estimated finding costs. This is the exhibit for the Interior Department estimated finding cost for the Sale 40 area. You have item A, exploratory wells, opposite that entry the amount, \$180,000,000; is that right?

A Yes.

Q I took that to mean that you were calculating or using that figure as 60 wells times \$10,000,000 per well --

A That's the assumption --

Q The lower reserve case?

A That the Interior Department used in developing the \$180,000,000 figure, yes.

Q You took that figure along with the other figures shown as items B, C, and D under Roman Numeral 2 of page 1 to get you to a total cost of \$625,000,000; is that right?

A That is correct.

Q Then you divided the total estimated reserves of five billion, one hundred million BTU by that cost figure to get the finding cost in cents per unit?

A I divided the dollar figure by the estimated reserves, yes.

Q I'm sorry, I said the opposite.

In reaching the figure of 12.26 cents as the finding costs per unit which the Department -- which you compare to



the finding costs of your source stated, you assumed with correctness or you used the same number of facilities that the Department used in its Table 3 even though you disagree with the number of facilities --

A I guess it follows. In other words, the test validity of their investment estimate, I took the total dollar related to finding, oil and gas and divided that by the total oil and gas reserves.

That is substantially lower than any finding cost estimate that I'm aware of. If you ask me why would that be the case, one explanation may be that the range of facilities for producing wells is too low.

In other words, if you have to drill twice as many wells out there when you have double the investment.

Q Let's look, again, at page 1 of your second exhibit which is the estimated costs of finding new crude oil in cents per barrel. Under the heading Cost Components, there is a figure given in cents per barrel, BTU exploration overhead; is that right, sir?

A Yes.

Q Is that a capital investment cost in the accounting sense or in the economic sense?

A It's something that goes towards -- should be covered by the finding cost for the commodity.

1  
2 Q Could you answer my question, though? I  
3 realize it's concluded as a finding cost in the source data  
4 you used. My question in the accounting sense or economic  
5 sense that item would be considered as a capital investment  
6 cost, a capital cost. You would not, would you?

7 A No.

8 Q What about the figure on the same page of the  
9 exhibit given for dry hole costs. In the oil and gas indus-  
10 try are dry hole costs considered capital investment costs  
11 or are they considered as expenses?

12 A I don't know what they consider them in the  
13 oil and gas industry, but if you refer to the PDOD, page 6,  
14 you've got capital costs figure for exploratory wells drilling.  
15 I'm assuming and I think justifiably so that this is consis-  
16 tent with typical offshore operations where you drill the  
17 exploratory well.

18 Some will be dry, some will find hydrocarbons. You  
19 very seldom complete and produce from the exploratory well.  
20 You plug and abandon that well at the mud line, value the  
21 discovered field to determine where the platform should be  
22 located.

23 Those figures go into the reporting statistics as  
24 dry holes. Most people call them expendable wells. The  
25 PC calls it a dry hole cost when they calculate the cost.



13

1 So does the author of the new crude oil cost estimate. It's  
2 strictly comparable of my study to include the FTC finding  
3 cost, estimate for dry holes against this exploratory wells'  
4 drilling estimate.  
5

6 Q That is an assumption on your part. You really  
7 don't know that. What you really know is page 3, page --  
8 page 6, PDOD estimated investment costs. You are comparing  
9 those to costs components and for example exploration overhead  
10 as shown on page 1 of your Exhibit 2 is not a cost that  
11 could be included on Table 3 at all; isn't that right?

12 A I'm not certain of that, Mr. LaFitte. The  
13 FPC, for example, doesn't include it as an operating expense.  
14 It goes to the cost of finding. What they meant when they  
15 said capital cost I'm not certain here.

16 Table 3 is entitled Estimated Investment Cost.

17 Q You are not certain of that, sir?

18 A I'm not certain as to what the author of the  
19 document meant with respect to the words "Capital costs"  
20 here.

21 Q You are not certain of it but you are comparing  
22 items and figures in that Table with data that a component  
23 costs -- not capital costs, but cost, finding costs you  
24 referred to --

25 A That's what I'm saying. I'm treating this

## Donkin-cross-LaFitte

exhibit as an estimated investment cost in finding oil and gas in the Sale 40 acreage.

I did not even recognize or address the definition of capital costs that also appears there. It seems quite reasonable to assume that a good accurate comparison can be made by comparing these investment dollars for exploratory wells, developmental wells, platforms and equipment and service-support equipment against the FTC figures because they are comparable.

Q You would have every reason to believe that there is no item in Table 3, estimated investment costs, that would compare, for example to exploration overhead costs that are shown on page 1 of your Exhibit 2?

A (No response)

Q In fact you would have reason to believe that that Table would not include the cost of that nature because they are not capital costs; isn't that right?

A No, that's not my testimony. In fact, I'm also assuming that all of the dry hole costs, other exploration overhead from my exhibit relate in large part to the line item exploratory wells drilling, \$3,000,000 per well.

Q What's the basis for that assumption? Exploratory wells are included as an investment capital cost and you've admitted and agreed, I believe, that exploration



overhead costs are not capital costs in an economic --

A The FTC treats them as investments.

Q What would be included under the entry,  
"Other Production Facilities" on page 1 of your exhibit 2?  
Given as final cost?

A In general, platform costs, lease equipment,  
dehydration facilities, liquid separators, development over-  
head.

Q How about -- are exploration costs to be  
included in that entry?

A Largely geological and geophysical expense,  
seismic work, etc, all of the costs that go towards evaluating  
where you are going to drill, that type of expenditure.

Q Mr. Donkin, will you turn to your fifth  
exhibit, please?

A Yes, sir.

(continued on next page)

Donkin-  
cross/Lafitte

1  
2 Q I want to discuss it with you. Let me ask  
3 you if it's not possible to have a production reserves  
4 ratio which would be larger than the numbers that you use  
5 in your exhibits for the production of reserves involved in  
6 the Sals 40 area.

7 Wouldn't it be possible to have a high  
8 production ratio of mcf peak production as anticipated, or  
9 as suggested in the PDOD be accurate?

10 A If there were no production in 1981 through  
11 1988, and all of those reserves were brought on at the  
12 same time, in 1989, then it is possible, because I believe  
13 that figure was--

14 Q Could you just--

15 A 11.9 percent. Obviously 11.9 percent is not  
16 much different from 10 percent, but my testimony is that  
17 you can't bring reserves on in '81, continued increased  
18 production through 1989, and still meet that production  
19 level in 1989. It's impossible. Can't take place.

20 Q Doesn't that sum-- I'm sorry.

21 A One of the two has to be changed.

22 Q Doesn't that assume a certain production  
23 reserves ratio?

24 A I don't understand the question.

25 Q Well--

fg SS



1893

Donkin  
-cross/Lafitte

A The development of my exhibit assumes a certain production-to-reserves ratio by year of production.

Q Yes, that's what I mean. It does assume a-- your exhibit does.

A Yes, and that's shown here. Now, I'm aware that in the Gulf of Mexico there are reservoirs that will produce 15 percent of their reserves in a given year. Then you have a much faster rate of decline thereafter, and believe me, I did it several ways. You can change the assumption any way you want to, but the results are going to be the same.

You will not be able to reach peak production in 1989 as long as you are bringing them on in 1981.

Q Let's look at your first page. Would you take the yearly average of the first nine years of production under the heading "Production and Percentage of Reserves," and give me the average percent.

A Right percent.

Q I get a different figure. You took the first nine?

A I took the first six.

Q Let's take the first nine.

A O.K. 7.277, does that check with yours?

Q Now I want to show you a table from this

Donkin

-cross/Lafitte

volume "Reserves of Crude Oil and Natural Gas in the United States and Canada as of December 31, 1975," published by the American Gas Association, American Petroleum Institute, and the Canadian Petroleum Association. You may be familiar with it.

Would you look at page 114 and read into the record the estimated reserves of 12/31/74 in the United States of natural gas.

A 2237,132,497 million cubic feet.

Q Now, there is also shown in the same table the total production of reserves during the year 1975, natural gas reserves.

A Yes, sir. That is approximately 19.7 trillion cubic feet.

Q You're right. I misled you. I intended you to read the Gulf of Mexico. Would you now read in the record the total estimated reserves of natural gas in the Gulf of Mexico.

A 35.3 trillion cubic feet of gas.

Q And the production from the Gulf of Mexico during 1975.

A 4.1 trillion cubic feet.

Q And the reserves in the Gulf of Mexico of December '71, '75 were what, of natural gas?



Donkin-

cross/Lafitte

A 32.87 trillion cubic feet.

Q You have your calculator there. Would you divide 4,118,844 by the figure 37,332,642.

What would that be?

A Eleven percent.

Q That would be expressed in percent reserves for production of 1975?

A Yes, sir.

Q Would you divide the 4,118,844 figure by 35,346,841, which is -- the last figure I gave you was what?

A The last figure that you gave me was the reserves in the Gulf of Mexico as of 12/31/74.

Q And that-- The result of that calculation is what?

A 11.65 percent.

Q Both of those numbers are production rates expressed in percentage of reserves, and they are both larger than the number that you have given me earlier as average rate shown on page 1 of your exhibit -- they are both larger than 7.28 percent. Is that what we came to?

A The average for the nine years?

Q Yes.

A Yes, sir.

Donkin-

cross/Lafitte

Q Now make this calculation. Would you divide 310,250 mcf by 2.6 trillion.

A My calculator doesn't go that far.

Q 310,250 mcf by 2.6 trillion.

A 11.9 percent.

Q Right, it's approximately the same as the two calculations that express the Gulf of Mexico in terms of percent of reserves.

A Yes.

Q The mcf figure that I gave you is the maximum production rate of gas estimated in the PDOD for the lower case reserve situation.

A No, sir. Well, let's see, maybe it is.

Q I think--

A Yes, it is. I was looking at it in terms of MCF per day.

Q Doesn't the actual percent in the Gulf of Mexico suggest that peak production rate of 850 million cubic feet a day-- I expressed it in a yearly term -- is possible out of a reserve of 2.6 trillion?

A No, sir. Let me explain why.

You just asked me to divide the 1981 peak annual production by the 2.6 trillion reserves estimate, and that was about 11.9 percent. But that is not the



1897

Donkin-  
cross/Lafitte

could be used?

A Yes, sir, but the results will remain the same. If you increase the per year of production to 12 percent and keep it constant for three years and then drop it down, you're still going to come up with the same results.

You can't make, in the high case -- there is no way you can increase 3,000 -- 3,083,000 mcf per day --

MR. LAFITTE: I'm sorry.

A --in 1989, if you are going to produce a billion cubic feet a day in 1985 and 240,000 mcf per day in '83, etc.

(Pause)

Q I think earlier -- I'm not sure if we made this calculation.

Looking at page 1 of your fifth exhibit again, would you confirm for me after the ninth full year of production according to this exhibit, 65.5 percent of the reserves would have been produced.

A After the ninth year?

Q Yes.

A 65.5 percent.

Q All right. Now looking at the second page of that exhibit, which is a different source of data which

1898

1 THE COURT: Denied.

2 MR. BRUCE: The defendant's call Mr. Robert  
3 Bybee.

4 THE COURT: Do you want a minute while the  
5 witness collects his documents and the new witness  
6 gets set up?

7 All right, we will take a few minutes recess.

8 (Recess taken.)

9 MR. KAUFMAN: Your Honor, during the recess I  
10 gave Mr. Hemerson the documents I had received from  
11 Ocean County and Cape May County. Those are the  
12 documents that you asked for.

13 THE COURT: All right. Mark them in evidence.

14 THE CLERK: Plaintiff Exhibit T-253 marked in  
15 evidence.

16 ROBERT WILLIAM BYBEE, called as a  
17 witness, being duly sworn by the clerk of the court,  
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BRUCE:

21 Q Mr. Bybee, are you affiliated with the  
22 National Ocean Industry Association?

23 A Yes sir. I am on the Board of Directors of  
24 that organization.

25 Q And, Mr. Bybee, by whom are you employed?

BEST COPY AVAILABLE



1  
2 A Exxon Company, USA.

3 Q In what capacity?

4 A I am Operations Manager in the Exploration  
5 Department. And my responsibility -- my direct responsibilities  
6 are the -- all exploration in the offshore areas of the  
7 United States, plus the inshore area of Alaska. I am a  
8 geologist, geophysicist by profession and I have spent  
9 the last 37 years of my life looking for oil and gas  
10 throughout the United States.

11 Q Mr. Bybee, would you just very briefly  
12 describe the nature of the -- and I will refer to it as NOIA,  
13 if I may -- NOIA's Board, the various structures of that  
14 Board, the various groups that are represented on it.

15 A The National Ocean Industries Association is  
16 the trade association. And it has in excess of 300 member  
17 companies. These companies are those that make their  
18 living in the offshore areas bordering the United States.  
19 There are seven categories that we recognize on the Board  
20 of Directors. And there are -- out of about a 30-man Board  
21 of Directors, there are an equal number in each of the seven  
22 categories, plus a group that don't fit in those categories.  
23 Now, these categories include the producing oil and gas  
24 people.

25 Q You would put your company in that category?

1  
2 Q Turning, Mr. Bybee, to Sale No. 40 itself, the  
3 mid-Atlantic sale which, of course, is at issue in this  
4 case, can you describe it in general terms, the preparation  
5 which your company made in connection with that sale prior  
6 to its being held.

7 MR. KAUFMAN: Your Honor, I think I will  
8 object to this. If this is testimony about any kind  
9 of expense or preparation that was taken or expended  
10 prior to the time that the sale was held, that has  
11 no relevance to the particular issues here, because  
12 that I think was recognized earlier in the trial as  
13 being highly speculative and being expenses that  
14 could have gone down the drain had the Secretary  
15 decided not to hold the sale.

16 So I think it has no relevance to the issue  
17 in this court.

18 THE COURT: No, I will consider it. I think  
19 it might have a bearing on the issue of any possible  
20 decree.

21 You may inquire.

22 MR. BRUCE: Thank you, your Honor.

23 Q You may answer the question, Mr. Bybee.

24 A In anticipation of oil and gas exploration and  
25 sale as a result of the outer continental shelf land Act of



1901

Bybee-direct/Bruce

1189

1953, which directed the Department of the Interior to do these things, to put these hectacres for lease, and in anticipation of this Exxon started gathering geological and geophysical data in the Atlantic area north of Cape Hatteras in '65, about 12 years ago.

And each summer we gathered a little bit more geological and geophysical data. And our grids became closer in the gathering of this basic data.

Now, through sale time--

Q That's August of 1976?

A August of '76. In this 12-year period we spent \$4,748,000 gathering geological and geophysical information. Exxon alone. That was our cost.

Q By the way, Mr. Bybee, was that information provided to the U.S. Geological Survey?

A A majority of this has been provided to the Survey.

Q What expenditures, if any, Mr. Bybee, were made in connection with the analysis of the data which you have gathered for that expense?

A Well, of course, this is also a very substantial and important substantial expense, but a critical part. You gather the data and then you interpret it. So our geologists and geophysicists took this, and petroleum engineers,

Bybee-direct/Bruce

1190

1  
2 took this raw data and through the years have given Exxon  
3 their interpretation of what it meant so far as the poten-  
4 tial for oil and gas is concerned.

5 And through August, 1976, our estimates --  
6 not our estimates, but our accounting people tell me that  
7 we have spent \$6,584,000 in the interpretation and office  
8 expense.

9 Q So that, adding those two sums that you have  
10 given to us together -- those two figures that you have  
11 given to us together, generate a sum of approximately  
12 \$11.3 million in both gathering and analyzing geological  
13 and geophysical data preparatory to the sale; is that  
14 correct?

15 A Yes, sir, that's correct.

16 Q Now, I take it, the purpose of that -- Well,  
17 let me put it this way: What is the purpose of this \$11.3  
18 million expenditure?

19 A Well, of course, the purpose was to prepare  
20 Exxon -- put us in a position to be a viable bidder at the  
21 OCS land sale that would come up within the area covered  
22 by these expenditures.

23 Q When Sale No. 40 was held in August, did  
24 Exxon in fact, relying on that earlier data, bid on tracts  
25 in the sale?



1903

Bybee-direct/Bruce

1191

1  
2 A Relied on it. That was the principal and the--  
3 by far, the No. 1 group of data that we used to make our  
4 decision on the bids.

5 Q Of the 154 tracts that were offered in the  
6 sale, Mr. Bybee, how many bids or how many tracts received  
7 bids passed by Exxon?

8 A Exxon bid on 69 tracts.

9 Q And do you recollect, Mr. Bybee, the approxi-  
10 mate dollar amount of all the bids which Exxon made on  
11 those 69 tracts?

12 A Approximately \$729 million were committed by  
13 Exxon to the -- only 69 tracts in varying amounts.

14 Q In what form were these bids submitted to  
15 the Interior Department in connection with this sale,  
16 Mr. Bybee?

17 A These are sealed bids, and each company in  
18 a sealed envelope has a cashier's check for 20 percent of  
19 this bonus and an affidavit that they are a proper bidder.  
20 And it is spelled out in the affidavit how much the bid  
21 is per hectare for that tract that this company or group  
22 of companies wants to bid.

23 Q Were these bids, these sealed bids on 69  
24 tracts, ever opened?

25 A All of them were opened on the sale date and

1  
2 read out in public, and all -- all the other bids by the  
3 other companies were opened and read out, tract by tract.

4 Q Was this bid-opening process -- do you  
5 recollect where it was held? Physically, where did it  
6 take place. Do you know?

7 A Well, I did not attend the sale, but it was  
8 in downtown, New York, as I recall.

9 Q In one of the hotels?

10 A Yes, one of the hotels.

11 Q In a session open to the public?

12 A Open to the public, yes, sir.

13 In fact, many of the sales held in New Orleans  
14 and other places, it's been a packed crowd of up to 500 to  
15 800 people that attended.

16 Q Were the announced bids, to your knowledge,  
17 published in trade journals or in the financial press?

18 A Widely published, yes, sir.

19 Q So that it's fair to assume that at this  
20 point in time everybody who cares to know knows exactly  
21 what Exxon bid on each of the 69 tracts for which you did  
22 bid?

23 A That's correct.

24 Q And in that sense, then, the 11.3 million  
25 dollars of expenditures to generate these secret bids has



1                   been essentially spent?

2                   A           That's essentially right.

3                   Q           Now, you mentioned Exxon's case, or filed  
4                   bids on 69 tracts. On those 69, how many tracts was Exxon  
5                   the high bidder and on how many tracts was Exxon the  
6                   eventual successful bidder?

7                   A           Exxon placed high bids on 34 of the 69 tracts.  
8                   Four of our bids were rejected as being insufficient by the  
9                   Interior Department's evaluation.

10                  Q           So you were the successful high bidder on 30  
11                  tracts?

12                  A           We were the successful bidder on 30 tracts,  
13                  and actually paid the Federal Government \$343 million for  
14                  these as their high bid.

15                               Now, the cashier's checks for 20 percent goes  
16                               in with the bid. As soon as they issue those leases,  
17                               generally within two weeks, you must come up with the other  
18                               80 percent.

19                  Q           And that money was conveyed?

20                  A           That, plus about \$500,000 of advance, or first-  
21                  year rentals.

22                  Q           And the rental is what? A per acre charge?

23                  A           This is a per acre charge roughly. Well, here  
24                  we talk hectares, but it's roughly \$3 an acre or \$10 a hectare  
25

1  
2 A little less than \$10 a hectare. And that allows -- if you  
3 do not pay that, your lease expires that year, but if you do  
4 pay that, that extends the lease for another year, for a  
5 five-year term.

6 Q I believe you indicated -- you may have  
7 already answered this. I don't recall. Approximately what  
8 date did the balance of this 80 percent did you pay to the  
9 Federal Government?

10 A I am not sure. Generally it's about two  
11 weeks, and I'd say around September 1st was when we had to  
12 come up with the remaining magabooks.

13 Q And, Mr. Bybee, you-- Strike that.

14 It's fair, then, from a business perspective  
15 to describe Exxon as having an investment in the Sale 40  
16 area of 343 million dollars that you have described, the  
17 prepaid rental on -- or the lease rental -- that is the  
18 right term, for one year, plus the geophysical data  
19 gathered that was conducted to generate your bid, to put you  
20 in a position to bid, have you made a summary of that  
21 investment? What does that total, sir?

22 A That total, plus some commitments which have  
23 been made in 1977, of about \$5 million, comes to \$359,710,000.

24 Q And at my request, Mr. Bybee, did you determine  
25 what the current prime rate of interest is?



1  
2 A Yes. We checked with the New York banks yes-  
3 terday, and it's 6-1/4 percent as of yesterday.

4 Q Have you calculated the-- at the prime rate  
5 calculation, the monthly interest cost associated with the  
6 investment that you have just described?

7 A At 6-1/4 percent, the \$360 million roughly  
8 would be -- the interest on that money would be about  
9 \$1,875,000 a month, or about \$23 million a year.

10 Q Now, what was the entire amount in approximate  
11 terms of high bids cast by the successful bidders at  
12 Sale 407

13 THE COURT: We have that.

14 MR. BRUCE: I am sorry. The arithmetic can  
15 be done on the record.

16 A One is a little over \$1.1 billion.

17 MR. BRUCE: The Judge said it wasn't  
18 necessary; that is in the record.

19 Q Having made the investment that Exxon made  
20 in the Sale 40 area, what incentive, if any, exists for  
21 Exxon to go forward with the exploration and development  
22 of that area?

23 MR. LIKE: Objection. We are now beyond the  
24 cutoff date. This witness was tendered for a  
25 limited purpose. Now Mr. Bruce is extending the

1  
2 THE COURT: I wonder, has the Government  
3 paid the City sales tax on this?

4 MR. HYMAN: The Court is aware of the Constitu-  
5 tion of the United States. We are immune from local  
6 taxes.

7 THE COURT: That's too bad. It would have  
8 been greatly helpful to the City.

9 MR. HYMAN: Maybe we should have given some  
10 to Nassau, too.

11 THE COURT: Go ahead.

12 MR. HYMAN: Suffolk, I'm sorry.

13 Q Mr. Bybee, will you describe the actual--  
14 as opposed to shifting from financial details to physical  
15 activity that has taken place by Exxon or by Exxon con-  
16 tractors with respect to preparing for exploration of the  
17 Sale 40 area since the sale itself took place.

18 A After we determined that we were the success-  
19 ful bidder on some 30 tracts and saw the location of the  
20 tracts and the -- their position in relation to all the  
21 rest of the tracts up there, we immediately began the  
22 process of preparing for exploratory drilling. All right.

23 Now, that means that because of stipulations  
24 in the lease and some regulations, that we must go out  
25 on those tracts that we purchased and clear them for



1 archeological, biological ammunitions and other surface  
2 hazards that are out there. Hence, this means we go out  
3 with a geological vessel with sonar and radar on it, and  
4 criss-cross at very close intervals that entire 5,000-  
5 acre tract to assure ourselves and the Government that  
6 we can drill a safe well on that tract.  
7

8 Now, these are rigid specifications that  
9 we must follow. So we have been out there since September  
10 doing this part of the work.

11 Q And--

12 A And there are many other permits by the Corps  
13 of Engineers, EPA--

14 Q E.P.A.?

15 A Yes, Environmental Protection Agency. That  
16 we must comply with prior to the time that we spud a well.

17 Now, this is all going on.

18 Q Pardon me. By spudding a well, you mean  
19 I take it, just in laymen's terms --

20 A The initial--

21 Drilling and the drilling of the well.

22 Q Mr. Bybee, do you have an estimate as to  
23 the amount of expenditures on Exxon's part in connection  
24 with the-- with this surveying activity which you have  
25 described that has been incurred to date?

1  
2           A       This is still going on and we have not  
3 cleared all 30 of the leases, but we are estimating now a  
4 cost of between \$40,000 and \$50,000 to clear each tract.  
5  
6

7                   (Continued on the next page.)  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



DIRECT EXAMINATION

BY MR. BRUCE: (Continued.)

Q That would, therefore, be in the range of 1.2 to 1.5 million dollars, much of which has already been expended?

A Will be shortly.

MR. KAUFMAN: Object to the testimony if it hasn't been expended as having any relevance.

Q I would like you to make an estimate for Mr. Kaufman's benefit --

THE COURT: He said they spent about 5 million.

Q Was that included in the 5 million dollar figure His Honor referred to?

A Yes, it's committed.

MR. KAUFMAN: Same objection.

THE COURT: Overruled.

Q What arrangements, if any, has Exxon made to obtain exploratory drilling rigs for this sale area, Mr. Bybee?

A We have two rigs contracted for at this point that are suitable for drilling in the Atlantic offshore.

Q Could you identify them by name?

A Yes, one of them is one we hope will be about the last well in the Gulf of Mexico. It's the pace setter

2

1

Bybee-direct-Bruce

2

three, a very large semi-submersible. It will be the first rig that we will bring -- first drilling equipment that we will bring into the Atlantic.

3

4

5

6

Q It is anticipated you would bring that into the Atlantic about what date?

7

8

9

10

11

12

MR. KAUFMAN: Again I object. Now they're talking about not only things that are past, but things in the future. This witness is being offered to say how much money Exxon has expended during the time of the bidding and now. Now he's getting into what they're going to do in the future.

13

14

15

16

17

THE COURT: They have to draw plans, start things going in order to work in the future. They have to make commitments now. I'll allow it, but bring it to a head. I think we all understand this is what happens.

18

19

20

Q Let me put this question to you. If the pace setter three -- you have contractual commitment to the pace setter three?

21

22

23

A Yes, sir.

24

25

Q You're obliged to pay rent for it whether you use it or not?

A That's correct.

Q Your present plans are to use it in the Atlantic



1  
2 area?

3 A Yes.

4 Q If it could not be used there and if it has to  
5 be mothballed, so to speak, what are the expenses with storing  
6 it?

7 A In the neighborhood of \$25,000 a day would be  
8 the payment that we would have to make to the contractor.

9 Q The Judge would like us to expedite this. You  
10 mentioned another rig. Do you have a contractual commitment  
11 toward it as well?

12 A Yes, we have another rig that is being built at  
13 this point. It will be named The Glomar Pacific.

14 THE COURT: Is that the same -- when did the  
15 Glomar, wasn't that used to race --

16 THE WITNESS: Yes, Global Marine is a large  
17 drilling company, contracting company. They have about  
18 10 or 15 of these rigs, ones that Glomar explored, the  
19 Glomar conception, the Glomar Pacific, the Glomar  
20 Grand Banks. When the front end term Glomar is  
21 there, that means this one company, Global Marine, owns  
22 the boat.

23 Q The notorious one was the Glomar Explorer?

24 THE COURT: Glomar Pacific, first ship in the  
25 Atlantic. That's the way it goes. Bring this to a

close as soon as you can.

MR. BRUCE: I'm trying, your Honor.

Q Has Exxon obtained any, or entered into any commitments in connection with real estate or other facilities to serve as a support base for the Sale 43 area?

A For exploratory drilling only. We have leased some space at Quonset Point Road Island, at Davidsville. This will be about a six acre tract of land where we will stage the pipe and the mud and the supply facilities to support the drilling riggers.

Q What financial commitment has been made in connection with that installation?

A This is approximately \$550,000.

Q Based upon your experience in this business, Mr. Bybee, and upon what knowledge you might have from the trade press or other sources, do you have reason to believe that other of the successful bidders in the Sale 43 area have made comparable preparatory development looking towards development in this area?

A Yes, it would be my guess they have, plus the supply support service people.

Q Let's turn then, if we might, Mr. Bybee --

THE COURT: You mean Exxon supply and service people?



1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. BRUCE: Your Honor, I would tender Mr. Bybee as a representative --

THE COURT: That's sufficient, all of the companies I assume --

MR. BRUCE: There's something not in the record and I think should be. Mr. Bybee has, I think, explained the production companies' status as of the moment. I would like to turn, briefly, and I don't think it will take long, to his testimony as an official of NOIA concerning the preparatory plans made by companies that are not affiliated with Exxon but that will be providing services that will be entailed in the exploratory position.

THE COURT: Very brief. I'll give you 5 minutes to complete this.

Q If you could, Mr. Bybee, to give us the general activities of which you're aware of some of these support companies have made in connection with anticipated exploration Sale 40 area?

A In the Atlantic City area, the helicopter companies who will fly personnel out to the rigs, have leased spots and some of them have actually purchased into helicopters with this in mind. Petroleum helicopters tells NOIA they have 6 new helicopters they will use in this bid for

ybee-direct-Bruce

Quonset Road Island, there are 15 to 20 of the companies like the Halburton Carent company, the Bay Road Mud Company, Drilling Fluid Company, Milcam, Slumper Jay (Phonetic), which is a well surveying company. These companies, each one, have made current commitments of from \$300,000 to \$700,000 for space and getting ready for operations. Each one of them, through the MOIA asked them how many jobs each one of them, the local people they would hire and train to do this work and they range from 10 to 14 --

MR. LIKE: Objection, dollar expenses or commitment, fine, but propoganda with regard to jobs is out of purview with this witness's testimony.

THE COURT: Why propoganda?

MR. KAUFMAN: With respect to the intention of the officials were of the various groups of New Jersey, you excluded --

THE COURT: Bring it to a close, please.

Q Finally, do you have any estimates as to the expenses involved in, let's say, the first year of exploration by Exxon alone in terms of purchase of commodities, hiring of people, paying of salaries, what have you, economic activity?

MR. LIKE: Point of clarification. Is this a commitment or is this a plan to spend money in the future? If it is a plan and not a commitment, I



Bybee-direct-Bruce

object to any evidence of it.

MR. BRUCE: It could be both.

THE COURT: Put it in. This is your last question.

A Let me be specific here and talk about the pace setter three drill ship which we plan to bring up this spring. We have that under contract until the first of October. If we have -- we're about run out of locations in the Gulf of Mexico. If this rig is stacked, it will cost us between now, the time, if we're not able to bring it on time, around \$25,000 a day for the time that it's not there.

We turn this around and say, if this ship is operating out there around a hundred people will be directly associated with it --

MR. KAUFMAN: Objection, the witness is grabbing a hold of the --

THE COURT: Let's have the answer and move ahead.

Q If we can just have a simple answer, Mr. Bybee, as to the approximate expenses associated with the operation, let's say, of a drilling rig?

A About \$25 to \$26 million dollars a year.

Q Per rig?

A For this particular pace setter three.

THE COURT: Any cross?

MR. HYMAN: I have some questions.

(Mr. Hyman will waive.)

CROSS-EXAMINATION

BY MR. KAUFMAN:

Q You said you were gathering geological data since 1965, is that correct?

A That's correct.

Q You said you gave some of that to the United States Government.

A That's correct.

Q Was it given before or after the bidding?

A Before the bidding.

Q Was it given all along as it was gathered?

A Some was and some was not. The seismic data was not. The core drill, the drilling data that we gathered out there was.

Q Was it given for nothing?

A Yes, it was.

Q Was the interpretation data given?

A No.

Q That still is within your possession?

A Yes.

Q You started doing this in 1965. Did you assume



then in 1963 sales were going to be made offshore?

A Yes.

Q Did you have any information that it was going to be made offshore?

A In those days the Interior Department was planning on about a 1970 sale in the Atlantic.

Q They told you that?

A No.

Q How do you know?

A This was informal discussions with those people.

Q In the Department of Interior?

A Yes.

Q They said they were planning on it then?

A Well, if you recall in those days they did not have these five-year plans they published. The only way we were ever able to find out what their plans were in the Gulf of Mexico, or of any other place, was to go ask, "What are your plans?" This is how we did our planning. It was not satisfactory compared to these five-year plans that they public now.

Q Which is much more satisfactory to Exxon?

A Excuse me?

Q Whether the department —

What the Department of Interior is doing is much

more satisfactory to Exxon?

1920

A Yes, we're able to plan better.

Q If they had decided not to do it in 1970, all the money you spent between 1965 and 1970 would have just gone out the window?

A No, that's not right.

Q You would have had use for the data in other purposes?

A If the sale had not been held in '76, it would have been out the window.

Q If there had been a decision in '75, let's say, that there will be no Atlantic leasing, all of that data would have gone out the window, right?

A Yes.

Q You wouldn't have come to this court of law or any place and said, "Well, Gee, Exxon has lost 10 million dollars." You would have been prepared to take that loss, right?

A We assume --

MR. BRUCE: It's unfair to ask this witness whether he would come to a court of law to challenge or anything else.

THE COURT: Yes.

Q Would you have a claim for that money back?



2 A We assumed the Outer Continental Shelf Lands  
3 Act, which in one of the preambles of it says there's an  
4 urgent need to develop the OCS was still the law of the land.

5 Q You were willing to take that risk?

6 A We were willing to take the risk that the most  
7 prospective areas in the OCS would, according to law, be  
8 offered for sale and exploration.

9 Q I'm a little confused about a word you used  
10 before, Mr. Bybee, a megabook. What's a megabook?

11 A Lots of books.

12 Q Is that a term used in the oil industry?

13 A I think I heard that from Bismarck in the  
14 funny papers.

15 Q What was Exxon's gross business --

16 THE COURT: Don't answer that.

17 MR. KAUFMAN: --

18 THE COURT: I know you can report the laws.

19 MR. KAUFMAN: What I want to drive -- the  
20 relationship, first of all, they've taken it off their  
21 expenses.

22 THE COURT: I don't want to get into these  
23 details. Let's move ahead. I'm going to cut off  
24 cross-examination if you don't bring it to a head  
25 immediately.

1922

Q You have plans for exploration bases in New York City at the present time?

A I didn't understand that.

Q Do you have plans, does Exxon have plans for exploration bases in New York City?

A We have exploration people in New York City, but they're not directly responsible and are not working this area, the Baltimore Canyon area.

Q Do you have plans for people coming into New York City?

MR. BRUCE: Can the question be more specific?

A Let me say --

Q Do you have plans to establish a service base, let me be more specific.

A Let me say this. We have no plans at all until we make some discoveries.

Q But for exploration you have no plans at all for bringing bases into New York City, do you?

A Well, some of our people may live in the New York City area.

Q Do you now have plans for bringing in an exploration base to New York City? That's all I'm asking you.

A I don't think we have any plans like that.

(Continued on next page.)



Bybee-cross-Like

CROSS-EXAMINATION

BY MR. LIKE:

Q Was your company aware that a lawsuit had been instituted in February of 1975 challenging the OCS leasing program and subsequently aimed to specifically challenge lease Sale 40?

A Yes.

Q With the knowledge of that lawsuit, your company nevertheless proceeded to make additional expenditures of money and to enter into commitments, is that correct?

A Yes, sir.

Q Did you in any of your commitments provide for cancellation in the event the sale were not held or if the sale were rescinded?

A In our planning --

Q In your commitment, the contractual --

A Yes, we considered that a risk, one of the many risks that you must take in a business corporation like that.

Q You considered the lawsuit, the outcome of the lawsuit a business risk?

A Of course.

Q In the contracts which you entered into in pursuance of your preparation for Sale 40 and post-Sale 40 planning, did you provide for any protection for your company

2 in the form of a cancellation of particular commitments in  
3 the event the sale were rescinded or the sale was enjoined?

4 A There's some provisions like this.

5 Q Can you be more specific in terms of what com-  
6 mitments did you protect yourself with cancellation provisions?

7 A Yes, like this pace setter three. We have  
8 several ways that we hedge there. One is that if we have to  
9 stack it instead of it being the basic rate, it's a much  
10 reduced rate when it's in mothballs. That's a provision in  
11 the contract.

12 Q Any other contracts or commitments which are  
13 cancellable?

14 A Yes, our Quonset Point contract is a six month  
15 with six month renewable or one year. I'm not certain if it's  
16 six months or a year. It is a very temporary type of contract.

17 Q Have you now identified all of the major commit-  
18 ments that Exxon has that are incident to the Sale 40 trans-  
19 actions?

20 A Yes, sir, I think I have. I have not all the  
21 details. There may be some minor ones but these are the  
22 major ones.

23 Q You also referred to some helicopter real estate  
24 activity, helicopter state real estate leasing activity in  
25 the Atlantic City area.



1 A Yes.

2 Q You indicate several hundred thousand dollars  
3 in commitments have been entered into with respect to those  
4 helicopters support activities, is that correct?  
5

6 A Petroleum Helicopters, Inc., which is one of  
7 the member companies of NOI advises they are negotiating a  
8 Beta (PH) field and Nefac (PH) field. These are two, one  
9 commercial area and one semi-Government for space to martial  
10 the crews and install equipment that must be flown out to the  
11 area.

12 Q Those are negotiations that have not yet been  
13 consummated contractually, is that correct?

14 A What Mr. Frank Lee (PH) told me about this was  
15 that they did have these three-two million dollar helicopters  
16 and they would not know what they're going to do with them if  
17 this sale were cancelled. If this activity did not carry on.

18 Q The persons who entered into these helicopter  
19 commitments, were they aware of the lawsuit at the time they  
20 entered into those commitments?

21 A Yes, sir.

22 Q The exploratory data which was gathered by your  
23 company during the twelve-year period, does that have value  
24 independent of whether or not Sale #1 proceeds? You're nodding  
25 in the affirmative, is that correct?

1           A       The data we have and the interpretations and  
2  
3 the money we spent gathering this G and G is in an area  
4 larger than the actual tract area. If another sale occurs  
5 later, this same data can be, along with information from the  
6 wells, can be used as an ongoing portfolio of information.

7           Q       In other words, it has continuing value irrespec-  
8 tive of the outcome of Sale 40?

9           A       This I'm not sure I know what you mean. I  
10 presume if there were never any other sales in the Atlantic  
11 area, then you know it would have no value at all anyway.

12          Q       From the standpoint of long-stage planning,  
13 if there was a sale held five years or ten years hence, that  
14 portfolio of information would have value to Exxon?

15          A       Yes, but may I make another point here, though?  
16 This is highly technical information that year by year we  
17 become more sophisticated in our data gathering, and we get  
18 better data each year, and suggesting more data, you become  
19 more sophisticated in your predictions as to whether or not  
20 you can find oil and gas.

21          Q       A company successful and renowned as Exxon tries  
22 to get the most sophisticated data it can?

23          A       In those areas, we consider the most prospective,  
24 yes.

25          Q       You were asked about the questioning of opening



17 1

2 bids which took place on August 17. Am I correct, as a result  
3 of the opening of all the bids, all of the major oil companies  
4 became aware of each others bidding strategies and each  
5 others information?

6 A Yes.

7 Q If the sale were rescinded, everybody would know  
8 what everybody else had been up to, is that right?

9 A That's right.

10 Q If there were some bidding at some future time,  
11 all of the companies would be bidding against each other with  
12 each having maximum information as to the information that  
13 had been gathered by the others and the interpretations that  
14 has been placed upon that information by the others, is that  
15 correct?

16 A This is almost mind boggling as to the strategies  
17 you would use if something devastating like this occurred.

18 Q Am I correct that in any future bidding all of  
19 the companies would be starting from the footing of knowing  
20 what each other had gathered, how each of them had inter-  
21 preted what they had gathered?

22 MR. BYHAM: The question has to be more specific.

23 THE COURT: Is there an objection?

24 MR. BYHAM: Yes.

25 THE COURT: Sustained.

1928

1 public generally of the case. So if you talk  
2 about that, writing briefs, responses, argument and  
3 also the problem of what to do with the documents  
4 now -- if I could have some of the documents at  
5 least, I could read them. I have read the documents  
6 to the extent that I could, that we had last summer.  
7 Of course, I have forgotten. I just can't retain this  
8 stuff in my mind. I should, I suppose.

9 MR. HYMAN: You can read your decision.

10 THE COURT: I don't even remember in detail  
11 what I have in the decision because once I get it  
12 off my desk, I forget about it.

13 MR. HYMAN: We can supply you with a copy.

14 THE COURT: We have a copy.

15 MR. HYMAN: It would be most helpful without  
16 divulging what your thinking is, if you could give  
17 us an idea of what area -- we can brief this and  
18 fill up the whole room. We could have first year  
19 production.

20 THE COURT: I still think that the local and  
21 state zoning control problem is a just one,  
22 particularly in view of the fact that we do have in  
23 evidence now an indication that the people who under-  
24 stood the problem were able to indicate to themselves  
25 where the pipeline would go and what would happen.



1929

Whether the environmental statement should have been more specific, I'm not sure. It does seem to me in a number of these areas that statement was fairly abstract. We weren't dealing with a theoretical problem. We were dealing with a fairly precise issue, and anybody apparently who is in the business, who understood the value of dollars and cents or megabucks, as the last witness put it, wasn't dealing with general theoretical college theses. They were drawing lines. They were sending boats out. They knew exactly what the problems were.

It strikes me looking through a lot of the material this summer, and I will look through it again, that a great deal of the material in the impact statement was so abstract -- it is all interesting -- but it almost read like a college thesis rather than by a person who had to make a practical decision or help somebody else make a practical decision.

Whether there should have been lines drawn so people could have focused on where the pipelines might come in, what the environmental problems were with respect to those pipelines, what the zoning problems might have been, so that the public and

1 the Secretary could have been able to say this is  
2 what it is. I don't know. That is troublesome to  
3 me, and I must say that there was very fine testimony  
4 as to the map by the Shell consultant and it brought  
5 it further to a head in my mind.

6 I was also very much impressed by Donkin's  
7 testimony. He is a powerful witness. I think he  
8 raised very serious questions about the accuracy  
9 of the cost estimates and the accuracy of the  
10 production estimates and other aspects that he talked  
11 about.

12 This also has an impact, because the Secre-  
13 tary had to weigh the possible advantages as against  
14 a variety of costs.

15 I wasn't too impressed by what he said about  
16 the underestimates of post production in onshore  
17 United States, because it seems to me that's so  
18 highly speculative that the Secretary might well  
19 have taken a sound position when he took a pessi-  
20 mistic view of that, and I wasn't impressed by the  
21 geopolitical aspects indicating that the Arabs were  
22 going to be forced to sell oil to us, when we have  
23 more oil than we needed. It may be true, but it  
24 seems to me that the Secretary might have been well  
25 advised in taking a pessimistic view of that.



1931

I wasn't at all impressed by the view that the companies had in effect committed themselves to keep importing oil, because that's the nature of the international companies involved, and I don't think the Secretary had any control over that. That was the situation that he faced.

I was also a little bit concerned with the testimony given by Judith Gresham. I meant to ask her whether she was a descendant of Gresham's law. She was certainly a very candid witness and she made it quite clear right from the outset of the planning they never considered separate exploratory production leases, so I just understood what the PDOD and the other discussions were all about, because apparently it was just a facade, if her testimony is to be credited, nobody considered.

It may have made a difference in what contracts were out and so on. She was very firm on that. I may be mistaken. You will have to consider that. That's in my mind anyway.

I thought generally most of the witnesses-- all of the witnesses, very, very, very good. I generally accept their credibility. They were a most impressive group. Highly experienced people at all levels, industry and government.

1932

1 And among the environmentalists, very dedicated  
2 people. I don't think any of them tried to mislead  
3 me. They may have been wrong. It wasn't because  
4 they were deliberately wrong.

5 I don't think there are any other matters that  
6 are of concern to me. There were probably some  
7 things that came to mind as I was working.

8 Those seem to me to be the main problems.  
9 Again I want to compliment counsel for the way  
10 they handled it. I know at times I have been  
11 rather short and nasty to one or another or all of  
12 you and I apologize, but we did close the hearings.  
13 Now we'll take about ten minutes or whatever you  
14 need and try to come in with a reasonable schedule  
15 that will be helpful.

16 MR. HYMAN: Your Honor, to relieve your  
17 concerns about Miss Gresham, and the exploration--

18 THE COURT: I don't want any argument now.  
19 That wasn't my purpose. I don't want any argument.

20 MR. HYMAN: It's not an argument.

21 THE COURT: I don't want--

22 MR. HYMAN: --to take judicial notice of the  
23 law.

24 THE COURT: I don't want anything.

25 MR. HYMAN: You don't want to know the law?



1  
2 THE COURT: The ongoing ones, you do not have  
3 to worry about, because they were not available to  
4 him. There was not very much in the way of base  
5 studies finished.

6 MR. LIKE: The defendants are arguing, whatever  
7 problems might arise in the future, could be resolved  
8 because of the environmental studies that are ongoing  
9 which will enable an assessment of environmental  
10 damage. Those are what the studies are not intended  
11 to do, to assess or predict, so there is no mechanism  
12 either past or ongoing for the Secretary to be able  
13 to exercise --

14 THE COURT: I do not believe that is so at all.  
15 They can hold up drilling permits. They can hold  
16 up drilling as they did in the Santa Barbara  
17 continued production. They can require all kinds of  
18 limitations under the lease stipulation --

19 MR. LIKE: In theory, yes. But the argument is  
20 made by the defendants, if they determine that such  
21 activity will cause environmental damage, they will  
22 take appropriate action. There is no mechanism for  
23 making that determination, because the base line  
24 studies were not designed to do the very thing that  
25 your Honor is postulating right now.

5 1 of exploration and production.

2 This is not what a rational decision-maker  
3 does.

4 THE COURT: That's pretty poor work if he does  
5 it that way.

6 MR. LIKE: Aside from knowing the advantages  
7 of separation, the Secretary also knew what Brunjes  
8 knew, that proposed feasible pipelines routes could  
9 be shown on a map indicating how Sale 40 oil would be  
10 transported to refineries.

11 He knew also, that new production might already  
12 have been begun before exploration was completed and,  
13 therefore, that production could begin before the  
14 credit plans were completed.

15 In that regard I cite program EIS, Volume 2,  
16 page 400 which the Secretary acknowledges.

17 THE COURT: I don't believe it's reasonable  
18 based on the information we have to believe that  
19 production will begin before the plans --

20 MR. LIKE: I can't hear you.

21 THE COURT: I don't think it's reasonable to  
22 conclude that production will begin before the plans  
23 are completed. They're supposed to be completed the  
24 end of '78. They can't possibly begin production  
25 before '79.



1935

1 of response to a comment that you made during  
2 Mr. Kaufman's argument as to the cost, so forth,  
3 that have been incurred since the injunction,  
4 preliminary injunction, was vacated.

5 I have indicated in my briefs why I think the  
6 injunction remedy is appropriate and why the public  
7 interest outweighs the alleged damage.

8 In Calbert Cliffs, there is a striking  
9 phrase which I think is applicable and refutes the  
10 arguments that the defendants are advancing in this  
11 regard; that is that considerations of  
12 or economic costs are not sufficient to strip the  
13 section of NEPA of its fundamental force of serving  
14 the environmental objectives.

15 It was testified by Mr. Bybee he knew it was  
16 a business risk.

17 When this matter was argued in the Court of  
18 Appeals the judge said to the assembled audience,  
19 the Court of Appeals has power to rescind the leases  
20 if it is ultimately determined that NEPA was violated.

21 While the industry was sitting in the ballroom  
22 in the hotel of New York waiting for the decision  
23 to come down, they all knew that the game was not  
24 over; that the merits had not yet been tried,  
25 and they went ahead and proceeded anyway, as

1 businessmen often do. I don't think we have to  
2 bleed now for the expenses that Exxon has put out.  
3 They probably will recover it from the consumers.

4 MR. PICCIANO: If it please the Court, I'll  
5 just take a few minutes.

6 Your Honor, throughout these proceedings  
7 and in the briefs that have been submitted so far  
8 by the defendants, it seems to me they've studiously  
9 avoided any defense of the alleged BLM failures  
10 to comply with the CDQ guidelines.

11 On the last day of trial it was alleged  
12 by the Government that these guidelines, because  
13 of the fact they use the word "guidelines," per se,  
14 that somehow they were optional, they don't carry  
15 force or weight or law.

16 Your Honor, these are federal regulations,  
17 enacted pursuant to specific authority of NEPA,  
18 Executive Order 11514. They are not planning guide-  
19 lines in a local planning sense, where they may be  
20 dealt with on an optional basis. They must be  
21 complied with.

22 Your Honor, I would like to refer to some  
23 specific sections of these guidelines which the County  
24 alleges have been violated specifically.

25 The first one is-- These are generally sub-



1 selection phase, suggesting there is some other  
2 document apart from the impact statement that has to  
3 be done here, that was addressed in the sale 35 case  
4 where Judge Williams in his opinion -- which we cited  
5 -- when the statute refers to the analysis accompany-  
6 ing a proposal, it means it must be completed sometime  
7 before the end of the decisional process. In that  
8 instance, it was just before the end of the decisional  
9 process. It doesn't have to be done during the tract  
10 selection process. Judge Williams so held.

11  
12 We believe that the decision holding that the  
13 present injunction was improperly entered, based upon  
14 a plenary review of the case, based upon the Court's  
15 own independent examination of the impact statement,  
16 and based upon the voluminous number of briefs, put  
17 this case in a vastly different posture.

18 It has been said that the bidders knew about  
19 this litigation. I suspect all of them did know.  
20 What were they to do -- what were they to do under  
21 the circumstances? Would Mr. Like have them get  
22 together, put their heads together, and say, "We are  
23 going to agree not to bid?"

24 THE COURT: They were in a difficult position.  
25 I appreciate the point.

